Supreme Court, U.S.
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No. _____

In the

Supreme Court of the United States

Janine K. Haas, individually and as representative for all others similarly situated,

Petitioner,

vs.

DAIMLERCHRYSLER Corporation, a Delaware Corporation, DAIMLERCHRYSLER MOTORS Corporation, a Delaware Corporation, and Bloomington Chrysler Plymouth Jeep Eagle, Inc., a Minnesota corporation,, individually and as representative for all other similarly situated Chrysler dealerships,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE MINNESOTA SUPREME COURT

PETITION FOR WRIT OF *CERTIORARI*

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QUESTION PRESENTED

Does Chrysler's Owner's Choice Protection Plan warranty requiring used car purchasers to pay a $150 fee to an authorized Chrysler dealer within 30 days of acquiring a used vehicle for the "service" of transferring the remainder of original warranty violate the Magnuson Moss Act's prohibition on warranties that are conditioned on the consumer's payment of a fee for a "good or service...that is identified by brand or corporate name"?

PARTIES TO THE PROCEEDING

Petitioner is Janine Haas.

Respondents are DaimlerChrysler Corporation, DaimlerChrysler Motors Corporation, and Bloomington Chrysler Plymouth Jeep Eagle, Inc.

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Petitioner respectfully petitions for a writ of certiorari to review the Minnesota Court of Appeals' decision in this case. Petitioner requested but was denied review of this decision by the Minnesota Supreme Court.

OPINIONS BELOW

The Minnesota Supreme Court's order (A-1) denying Petitioner's Petition for Review is unreported. The Minnesota Court of Appeals decision (A-9) is reported at Haas v. DaimlerChrysler Corp., 611 N.W.2d 382 (Minn. Ct. App. 2000). The Minnesota District Court decision (A-18) is unreported.

STATEMENT OF JURISDICTION

The Minnesota Court of Appeals' Order was entered on June 13, 2000. The Minnesota Supreme Court denied Petitioner's timely petition for further review by its Order entered on August 22, 2000.

Petitioner invokes the jurisdiction of this Court under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

This case involves the Magnuson Moss Warranty Protection/Federal Trade Commission Improvements Act, 15 U.S.C. §§ 1501-1513, most particularly sections 2302(c) and 2301(3).

Section 2302(c) of the Act prohibits warrantors from conditioning their warranties on the consumer's use of corporate-branded products and services:

> No warrantor of a consumer product may condition his written or implied warranty of such product on the consumer's using, in connection with such

product, any article or service (other than article or service provided without charge under the terms of the warranty) which is identified by brand, trade, or corporate name; except that the prohibition of this section may be waived by the Commission if--

(1) the warrantor satisfies the Commission that the warranted product will function properly only if the article or service so identified is used in connection with the warranted product, and

(2) the Commission finds that such a waiver is in the public interest. The Commission shall identify in the Federal Register, and permit public comment on, all applications for waiver of the prohibition of this subsection, and shall publish in the Federal Register its disposition of any such application, including the reasons therefor.

15 U.S.C. § 2302(c).

Section 2301(3) of the Act defines consumers to include used goods purchasers, or persons who acquire goods "during the duration" of a written warranty:

The term "consumer" means a buyer (other than for purposes of resale) of any consumer product, any person to whom such product is transferred during the duration of an implied or written warranty (or service contract) applicable to the product, and any other person who is entitled by the terms of such warranty (or service contract) or under applicable State law to enforce against the warrantor (or service

contractor) the obligations of the warranty (or service contract).

15 U.S.C. § 2301(3).

STATEMENT OF THE CASE

A. Nature of the Case

This case is a consumer class action brought under the Magnuson Moss Warranty Protection Act. The Act prohibits warrantors from conditioning their warranties on the consumer's payment of a fee for a service "identified by brand or corporate name." 15 U.S.C. § 2302(c).

In 1995, Ms. Haas purchased a used 1994 Chrysler New Yorker. When Chrysler sold the vehicle new, it warranted the vehicle's engine and transmission for the lesser of seven years or 70,000 miles. When Ms. Haas acquired the vehicle the lesser of six years or 44,459 miles remained on the original warranty.

Although language in the 7/70 warranty claims that it extends only to the "first buyer/owner," the right to enforce the original warranty extends to the second purchaser for a 30-day period during which the second buyer must pay Chrysler $150 to continue the warranty for its original stated duration. The warranty represents that Chrysler will honor the original warranty for its original stated duration only if the second buyer pays $150 to an authorized Chrysler dealer for the service of transferring the warranty. In the present case, Ms. Haas paid the $150 fee to Bloomington Chrysler Plymouth within thirty days of acquiring the vehicle.

Ms. Haas contends that, as a used car purchaser, she is entitled to the protections of the Act including, specifically, section 2302(c)'s prohibition on warranties that condition their coverage on the consumer's purchase of an "article or service...identified by brand or corporate name."

B. Background and Statement of Facts

From the late 1980's to 1994, Chrysler manufactured vehicles carrying a warranty that Chrysler designated as its "Owner's Choice Protection Plan" ("OCPP") warranty. The OCPP warranty allowed the original purchaser to choose between either: (1) a three-year or 36,000 mile warranty on the entire car; or (2) a seven-year or 70,000 mile warranty on the powertrain. The 7/70 warranty included a 12-month, 12,000 mile warranty on the entire car.

CHRYSLER DEFINED THE DURATION OF THE OWNER'S CHOICE PROTECTION PLAN WARRANTY BY TIME AND MILEAGE

If the original purchaser chose the 3/36 warranty, the duration of the warranty was the lesser of three years or 36,000 miles and covered all parts and labor needed to repair any item on the vehicle:

> The **"Basic Warranty"** begins on your vehicle's **Warranty Start Date**.
>
> The Warranty Start Date is the earlier of (1) the date you take delivery of your new vehicle, **OR** (2) the date the vehicle was first put into service (for example, as dealer "Demo" or as a Chrysler company vehicle). The **"Basic Warranty"** lasts for 36 months from this date **OR** for 36,000 miles on the odometer, whichever occurs first.
>
> The **"Basic Warranty"** covers the cost of all parts and labor needed to repair any item on your vehicle (except as noted below) that's defective in material,

workmanship, or factory preparation. You pay nothing for these repairs.

(A-40.)

If the original purchaser chose the 7/70 warranty, the warranty's duration was the lesser of seven years or 70,000 miles and the warranty covered the entire engine and transmission:

> The **"Powertrain Warranty"** covers these parts and components of your vehicle's powertrain for 7 years or 70,000 miles on the odometer, whichever occurs first, counted from the vehicle's Warranty Start Date.
>
> **Gasoline Engine:** cylinder block and all internal parts, cylinder head assemblies, core plugs, valve covers, oil pan, timing gear drive belts and/or chains and cover, oil pump, intake and exhaust manifolds, water pump and housing, gaskets and seals for listed components, vibration damper.
>
> **Transmission/Transfer Case:** case and all internal parts, oil pan, torque converter with starter ring gear, flex plate, bell housing, flywheel, gaskets and seals for these listed components.
>
> ....
>
> The **"Powertrain Warranty"** begins at the end of the **"Basic Warranty"** period. The **"Powertrain Warranty"** takes effect as soon as (1) your vehicle has been in service for more than 12 months from its Warranty Start Date **OR** (2) you've put more than 12,000 miles on the odometer.

(A-45; A-47.)

CHRYSLER CONDITIONED THE CONTINUATION OF THE ORIGINAL WARRANTY ON THE USED CAR PURCHASER'S PAYMENT OF A $150 FEE

Chrysler's OCPP warranty represents that the warranty extends only to the "first buyer/owner." This clause, however, extends the right to enforce the original warranty to the "second buyer/owner" for 30 days. Specifically, it allows a "second buyer/owner" to transfer the "remainder" of the vehicle's original warranty if he or she pays $150 to "an authorized Chrysler Corporation Dealer" "within 30 days" of buying the vehicle:

> The Chrysler "Owner's Choice Protection Plan" Warranty is extended only to the first buyer/owner of the vehicle. If you're the second buyer/owner of the vehicle, you may transfer the warranty coverage under the "Owner's Choice Protection Plan" Warranty and the 7/100 Corrosion Warranty (see page 24) into your name.
>
> To transfer the warranty, you must have an authorized Chrysler Corporation Dealer process a "Transfer of Coverage Application" for you. The cost for this service is $150. You pay this fee directly to the dealer. You must apply for a coverage transfer within 30 days from the date you buy the vehicle. As a Second Buyer/Owner, you may transfer only the remaining "Owner's Choice Protection Plan" coverage which the first buyer/owner elected, together with the remaining portion of the 7/100 Corrosion Warranty.

(A-33.) If the second buyer/owner failed to the pay the service fee to a Chrysler dealer within 30 days of acquiring

the vehicle, Chrysler refused to honor the original warranty.[1] (A-55; see also, A-33.)

CHRYSLER DISCONTINUED THE OWNER'S CHOICE PROTECTION PLAN WARRANTY BECAUSE OF CONSUMER DISSATISFACTION AND CONFUSION

From the 1980's to 1994, Chrysler marketed its cars based on the seven-year, 70,000 mile duration of the OCPP warranty. Chrysler's marketing was led by its Chairman, Lee Iacocca. Mr. Iacocca appeared on television commercials touting the warranty as "the best in the business" and further stating that the warranty's 7/70 duration was evidence that Chrysler made quality cars. (A-50; A-52.)

In his book, Talking Strait, Mr. Iacocca reiterated these claims:

> Yet because of past sins, the public's perception of our quality lags far behind the real thing. If our quality weren't up to snuff, Chrysler sure wouldn't be offering a seven-year, seventy thousand mile warranty, the best in the business. That's putting your money where your mouth is.

(A-50.)

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[1] A related case, Orvik v. DaimlerChrysler, No. CT 00-003592, is currently venued in Hennepin County District Court in Minneapolis, Minnesota. In Orvik, the plaintiff, Merlin Orvik, acquired a Chrysler Concorde with four years remaining on the 7/70 engine and powertrain warranty. Mr. Orvik was unaware of and failed to pay the transfer fee within 30 days. Approximately four months after acquiring the vehicle, the transmission failed. Mr. Orvik brought the vehicle to Chrysler for warranty repair. Chrysler denied responsibility due to Mr. Orvik's failure to timely pay the transfer fee. (A-55.)

In June of 1994 Chrysler discontinued the OCPP warranty and its $150 fee due to customer dissatisfaction and confusion created by its advertising. Chrysler spokesman Joseph Casola explained:

> The customer was dissatisfied. The perception of us as a warranty leader was basically based on advertising.

(A-53.) Mr. Casola further stated that Chrysler expected that discontinuing the OCPP warranty would: "drive higher customer satisfaction by eliminating confusion and complexity." (A-53.)

C. The Decisions Below

The District Court granted Chrysler's motion to dismiss for failure to state a claim under Rule 12 of the Minnesota Rules of Civil Procedure. The District Court reasoned:

> Taken as a whole, the [Magnuson Moss] Act is concerned primarily with eliminating deceptive warranty practices. Here there is no support for the proposition advanced by the Plaintiff. This Court, after reading the statutes under which Plaintiff brings this action, fails to find Plaintiff's cause of action. On a plain reading of the statutes under which Plaintiff brings this action, nowhere can it be found actionable to charge a service fee to extend an original warranty to a subsequent purchaser. Nor is plaintiff able to cite any case law so holding.

The Minnesota Court of Appeals affirmed the District Court. The Court of Appeals rejected Petitioner's argument that section 2302(c) applies to both "limited" and "full" warranties and prohibits warrantors like Chrysler who

designate their warranties as "limited" warranties from conditioning the original warranty on the consumer's purchase of a corporate-branded service. The Court of Appeals stated:

> This semantic argument is too weak to overcome the clear language of the warranty that it is "extended only to the first buyer/owner of the vehicle." Despite Haas's attempts to recast the warranty's limitation as a condition, the warranty provision is a legitimate limitation on the duration of the warranty as permitted by both the Magnuson-Moss Act and the regulations interpreting it.

Ms. Haas timely petitioned the Minnesota Supreme Court for review of the Minnesota Court of Appeals' decision on July 5, 2000. (A-3.) The Minnesota Supreme Court denied review on August 22, 2000. (A-1.)

REASONS FOR GRANTING THE WRIT

Issuing a writ of certiorari here would allow the United States Supreme Court to, for the first time, interpret the Magnuson Moss Act. More particularly, granting review will provide the Court with the opportunity to address two issues that affect all consumers of goods under warranty.

First, this case will allow the Court to determine whether a warrantor may condition the continued validity of its original warranty on a used good consumer's purchase of a brand name product or service. This issue has not been addressed by any court. Congress clearly intended that the Magnuson Moss Act apply to buyers of used goods under warranty when it defined a "consumer" as anyone who acquires a product "during the duration" of a written warranty. The issue here is whether a warrantor may extend the right to enforce its original warranty to a used good

purchaser but then condition that right on the payment of a service fee that would plainly violate the Act if imposed on the first purchaser.

Second, this case will more broadly allow the Court to determine the validity of the warranty practice of marketing a good on the basis of a broad, duration-based warranty (e.g. seven years or 70,000 miles), but in the text of that warranty "limiting" the warranty to a "first purchaser."

I. Argument Summary

Ms. Haas seeks to recover the $150 service fee she paid Chrysler when she acquired her used 1994 Chrysler New Yorker from Bloomington Chrysler Plymouth. Chrysler originally marketed and sold the vehicle with a seven-year, 70,000 mile warranty on the engine and transmission. Ms. Haas acquired the vehicle in 1995 with the lesser of 44,459 miles or six years remaining on the original 7/70 warranty.

By its terms the OCPP warranty extends the right to enforce the original warranty to the second buyer for 30 days. If the second buyer pays $150 to an "authorized Chrysler Corporation Dealer" for the "service" of "transferring" the warranty, then Chrysler will honor the original warranty with respect to the second buyer for the warranty's original stated duration. Chrysler's OCPP warranty lapses only if, after 30 days, the second buyer fails to pay the transfer fee.

Ms. Haas contends that as a used car purchaser she is entitled to the protections of the Magnuson-Moss Act because she acquired her vehicle during the duration of the original warranty and that, as a consequence, she is a "consumer" as defined by the Act. She further contends that Chrysler's transfer fee violates section 2302(c) of the Act by conditioning its original warranty coverage on her purchase of a corporate-branded service.

II. Congress Enacted Magnuson Moss to Provide Consumers with a Means to Combat Automobile Industry Warranty Abuses

The Magnuson Moss Warranty/Federal Trade Commission Improvements Act was enacted on July 4, 1975 after 8 years of legislative struggle. B. Clark & C. Smith, The Law of Product Warranties ¶¶ 14.01-14.02 (1984).

The impetus for the Act began in the late 1960's, when the Federal Trade Commission first undertook an investigation of automobile warranty abuses. Id. at ¶ 14.02. The FTC's reports concluded that automobile warranty coverage was at best inadequate and at worst fraudulent. This led Representative John Moss, the Chairman of the House Subcommittee on Commerce and Finance, to direct the Subcommittee's staff to evaluate industry practices to determine whether there was a need for federal legislation. Id.

The subcommittee staff found that some of the most common industry abuses were: (1) mandatory return of registration cards as a prerequisite to warranty coverage; and (2) limiting warranty coverage to the original purchaser. See id. After evaluating these and other warranty abuses, Congress recognized:

> that the express warranty had become in some instances an artfully contrived method of limiting or eliminating the kind of warranty protection that all but the most sophisticated buyers would expect to accompany a product touted to perform properly.

Id.

An essential consumer protection under the Act is its prohibition on "tying" arrangements or conditioning original warranty coverage on the consumer's use or purchase of corporate-branded products and services. Section 2302(c) of

the Act prohibits a warrantor from denying or refusing to maintain existing warranty coverage unless the consumer purchases the warrantor's products or services.

III. Ms. Haas' Prima Facie Case: Chrysler's Owner's Choice Protection Plan Warranty Conditions Chrysler's Original Warranty Obligations on the Consumer's Payment of a Fee for a Corporate-Branded Service

In order to maintain a section 2302(c) claim, a plaintiff must show: (1) that he or she is a consumer entitled to relief under the Act; (2) that the warrantor conditioned its warranty coverage; and (3) that warranty coverage is conditioned on the consumer's purchase of an article or service identified by brand, trade or corporate name. 15 U.S.C. § 2302(c).

Section 2302(c) provides:

> No warrantor of a consumer product may condition his written or implied warranty of such product on the consumer's using, in connection with such product, any article or service (other than article or service provided without charge under the terms of the warranty) which is identified by brand, trade, or corporate name....

15 U.S.C. § 2302(c). An example of a condition prohibited under section 2302(c) is a provision that terminates the original warranty before its stated period if the consumer fails to pay for "periodic inspections" provided only by an authorized dealer. Rustevader, FTC Docket No. 9274, (May 24, 1996).

Other examples include provisions that require consumers to use only authorized dealers and authorized parts for non-warranty service and repairs. For example, it is impermissible to state: "This warranty is void if service is

performed by anyone other than an authorized 'ABC' dealer and all replacement parts must be genuine 'ABC' parts." 16 C.F.R. § 700.10(c). These provisions violate section 2302(c) because they require the consumer to pay a fee to the warrantor as a condition to the warrantor continuing to honor its original warranty obligations. The warranty therefore unlawfully functions as (a) an independent and captive source of revenue for the warrantor and its dealers; and (b) a means for the warrantor to avoid its original warranty obligations if the consumer fails to meet the condition. See id.

A. Ms. Haas is a Consumer Entitled to Relief Under the Act

The Minnesota Court of Appeals concluded that the "duration" of the OCPP warranty ended with the first buyer. In so finding, the Court of Appeals failed to acknowledge or address the warranty's 30-day extension of rights in the warranty to the second buyer and further failed to acknowledge or address the Magnuson Moss Act's definition of consumer which includes those who acquire goods "during the duration" of a written warranty. Ms. Haas contends that because the OCPP warranty contains a written provision extending to her the right to enforce the original warranty for 30 days after acquiring the vehicle, she acquired her vehicle during the duration of the written warranty. She claims that she is therefore a consumer entitled to the protection of the Act. This includes the right to recover conditional warranty fees under section 2302(c).

In dismissing Ms. Haas' claims, the Minnesota Court of Appeals stated:

> Despite Haas's attempts to recast the warranty's limitation as a condition, the warranty provision is a legitimate limitation on the duration of the warranty

as permitted by both the Magnuson-Moss Act and the regulations interpreting it.

In reaching this conclusion the Court of Appeals relied on the language in the OCPP warranty stating that the warranty extended only to the "first buyer/owner" of the vehicle. Based on this language, the Court of Appeals concluded that "duration" of the warranty ended with the first buyer.

The Court of Appeals' decision fails to recognize that the "first buyer" clause also extends to the second buyer the right to enforce the original warranty for a period of 30 days after she acquires the vehicle:

> If you're the second buyer/owner of the vehicle, you may transfer the warranty coverage under the "Owner's Choice Protection Plan" Warranty and the 7/100 Corrosion Warranty (see page 24) into your name.
>
> To transfer the warranty, you must have an authorized Chrysler Corporation Dealer process a "Transfer of Coverage Application" for you. The cost for this service is $150. You pay this fee directly to the dealer. You must apply for a coverage transfer within 30 days from the date you buy the vehicle. As a Second Buyer/Owner, you may transfer only the remaining "Owner's Choice Protection Plan" coverage which the first buyer/owner elected, together with the remaining portion of the 7/100 Corrosion Warranty.

This clause represents that, for 30 days after acquiring the vehicle, the second buyer has the vested right to cause Chrysler to perform on the original warranty. The clause represents that Chrysler will perform on the original warranty

provided that the second buyer pays $150 to Chrysler's authorized dealer for the "service" of transferring the warranty. If the second buyer does not pay the service fee, these rights lapse 30 days after she acquires the vehicle.

By its own terms, therefore, the OCPP warranty did not and could not end when the first purchaser sold the car. Chrysler's written obligation under the warranty could end prior to the original 7/70 duration only if (a) 30 days passed from the date the second buyer acquired the vehicle; and (b) the second buyer did not pay the $150 service fee to Chrysler's authorized dealer. Under no circumstances could the warranty end with the first buyer.

As noted above, section 2302(c) prohibits warrantors from conditioning their warranties on the "consumer's" use of an article or service identified by brand or corporate name.

The Act defines a consumer as both the original purchaser of the product and "any person to whom such product is transferred during the duration of an implied or written warranty." 15 U.S.C. § 2301(3). The Congressional Conference Committee report explaining the Act states that Congress intended that used goods purchasers be entitled to the Act's protections:

> Conforming changes in the definition of "consumer" were made to eliminate any possible construction that title I [the Act's definitions] did not apply to the commercial sale of used consumer products.

Conference Report No. 93-1408, Joint Explanatory Statement of the Committee of Conference, 93rd Cong., 1st Sess. pt. 14 (1974); see also, H.R. Rep. No. 93-1107, 93rd Cong., 1st Sess. (1974).

The Act's definition of consumer, therefore, simply requires that the second buyer/transferee acquire the good during the duration of the written warranty. This definition, together with the OCPP warranty's written provision

extending the right to enforce the original warranty to the second purchaser for a period of 30 days after she acquires the vehicle, operate to place second buyers like Ms. Haas squarely within the Act's protection. Because the "duration" of the warranty, as measured by the minimum period of time during which Chrysler must honor it, extends for 30 days after the second buyer acquires the vehicle, second buyers fall within the Act's definition of consumer.

Moreover, here Ms. Haas could not have assumed the "remainder" of the OCPP warranty unless the warranty actually existed, and had not expired, at the time she acquired the car. Because the "first buyer" clause gives Ms. Haas the right to enforce the original warranty for 30 days, she acquired the vehicle "during the duration" of the "written warranty." Applying the warranty's 30-day provision to the Act's definition of consumer, it is clear that Ms. Haas is entitled to complete rights in the original 7/70 warranty at the moment of transfer. The definition of consumer gives Ms. Haas full rights in the warranty irrespective of Chrysler's attempt to condition those rights on the payment of a service fee to its authorized dealer.

In summary, Ms. Haas did not acquire the right to the original warranty because she paid the $150 service fee. She acquired the right to the original warranty because she purchased the vehicle during the duration of the original warranty as that duration was defined by Chrysler.

Furthermore, the duration of the warranty, stated in common-sense terms of time, was the lesser of seven years or 70,000 miles:

> The **"Powertrain Warranty"** covers these parts and components of your vehicle's powertrain for 7 years or 70,000 miles on the odometer, whichever occurs first, counted from the vehicle's Warranty Start Date.

This duration is of course is the duration Chrysler employed in marketing its vehicles. Ms. Haas acquired her 1994 New Yorker in 1995 with six years and 44,459 miles remaining on the original seven-year, 70,000 mile warranty. Under Chrysler's marketing definition of duration, therefore, Ms. Haas acquired her vehicle "during the duration" of the original warranty.

To illustrate, Section 2302(c) prohibits warrantors from conditioning their warranties on the consumer's purchase of corporate-branded products and services while the warranty is in effect. Hypothetically, there is no question that had Chrysler, for example, conditioned the seven-year, 70,000 mile warranty on the first purchaser paying a $150 fee to a Chrysler dealer within 30 days of purchasing the vehicle for the "service" of registering the original warranty that the service fee would violate section 2302(c). The result should be no different here.

In both the hypothetical and in the present case, the buyers are consumers under the Act. In both cases the warranty is conditioned on the consumer's purchase of a "service" "identified by brand or corporate name." In both cases the consumer should be entitled to recover the service fee. This is because the condition operates as: (a) an independent revenue generator solely for Chrysler dealers for which the consumer receives no consideration; and alternatively, (b) a means to Chrysler avoiding its original warranty obligations for consumers who fail to pay the fee within the proscribed 30-day period.

In sum, Ms. Haas has shown: (1) she is a consumer entitled to relief under the Act because she is a second/buyer transferee of a vehicle subject to a written warranty with a duration that extends, at a minimum, to 30 days after she acquired the vehicle; (2) Chrysler's seven-year, 70,000 mile warranty coverage was conditional because Chrysler would have denied its original warranty obligations if she did not pay $150 within 30 days of acquiring the vehicle; and (3)

Chrysler required that the fee be paid only to "an authorized Chrysler dealer" for the "service" of transferring the warranty.

B. The Act Applies to Services

There is no dispute that Chrysler is a "warrantor," that made a "written warranty" on a "consumer product." Chrysler, however, argued below that Congress intended that section 2302(c) apply only to goods, for example, oil filters. The District Court agreed, holding that "nowhere can it be found actionable to charge a service fee to extend an original warranty to a subsequent purchaser." This holding is contradicted by the plain language of the statute "no warrantor may condition his..warranty...on the consumer's using...any article or **service**...which is identified by...corporate name..." and also by the FTC's decision in Rustevader, FTC Docket No. 9274, (May 24, 1996).

In Rustevader, the FTC charged an automobile rustproofing warrantor with violating section 2302(c) because the warrantor conditioned its original warranty coverage on a service provided by its authorized dealers. In Rustevader, the warrantor conditioned warranty coverage on periodic inspections by "authorized dealers" who, like Chrysler here, charged a fee for the service. As in the present case, the consumer's failure to purchase the service in Rustevader caused the warranty to end before its stated duration.

The Rustevader court found that the rustproofing warranty violated section 2302(c) because "it conditions a warranty pertaining to a consumer product actually costing more than $5 on the consumer's use of a **service** (other than a service provided without charge) which is identified by brand, trade or corporate name."

The district court did not acknowledge or apply Rustevader.

C. The Act Entitles Ms. Haas to Recover the Service Fee

Section 2310(d)(1) of the Act allows a consumer to bring an action and recover damages for "any violation" of the Act. As Chrysler's $150 service fee violates section 2302(c), Ms. Haas has a right to recover it under Section 2310(d)(1).

IV. The Minnesota Court of Appeals Misinterpreted Federal Trade Commission Regulations

The Minnesota Court of Appeals held that Chrysler's OCPP warranty complies with the Magnuson Moss Act because the Act allows warrantors to limit the duration of their warranty coverage both in terms of time and ownership at the same time. The Court relied on the Federal Trade Commission's regulations interpreting the Act, specifically 16 C.F.R. § 701.3.

The Court of Appeals' conclusion is misguided for two broad reasons. First, as noted above, the Act's definition of consumer contradicts this conclusion by including in its protection used goods purchasers who acquire goods "during the duration" of the original warranty. Second, even if the Act allows a limited warrantor to limit its warranty by both time and ownership at the same time (e.g. "warranted for 70,000 miles or as long as you own your car"), the Court's conclusion does not support a Rule 12 dismissal of Ms. Haas' claim. Chrysler here did not terminate the original warranty with the first buyer, but extended the right to enforce the warranty to Ms. Haas for 30 days and conditioned the remaining duration of the warranty on Ms. Haas' purchase of a corporate-branded service. The Act expressly covers purchasers of used goods and further allows for a consumer's recovery of conditional warranty fees.

A. Section 701.3 Dictates What a Warrantor Must Conspicuously Disclose and Thus Has No Application to the Present Case.

Part 701 of the FTC's Magnuson Moss regulations is entitled "Warranty Disclosures." Section 701.3, the foundation for the Minnesota Court of Appeals' decision, provides:

> (1) Any warrantor warranting to a consumer by means of a written warranty a consumer product actually costing the consumer more than $15.00 shall clearly and conspicuously disclose in a single document in simple and readily understood language, the following items of information:
>
> (1) the identity or the party or parties to whom the written warranty is extended, if the enforceability of the written warranty is limited to the original consumer purchaser or is otherwise limited to person other than every consumer owner during the term of the warranty

16 C.F.R. § 701.3.

Section 701.3 does not, as the Court of Appeals determined, authorize a warrantor to limit its warranty both in terms of time and ownership (e.g. "this warranty is valid for the lesser of seven years; 70,000 miles; or as long as you own your car"). Section 701.3 simply defines disclosure requirements for all warranties, including those that are limited by ownership. As explained below, the Act and regulations contemplate "full" warranties that may be limited exclusively by ownership. In any event, Ms. Haas does not make a claim under Section 701.3 as there is no private right

of action under Magnuson Moss for a warranty disclosure violation. Such a claim is within the exclusive jurisdiction of the FTC. 15 U.S.C. § 2310(c).

B. Section 701.3 Requires Only That Full Warrantors Conspicuously Disclose to Whom the Warranty Extends

Furthermore, section 701.3, and more generally Part 701 of the FTC's regulations, applies to both "full" and "limited" warranties. 16 C.F.R. § 701.2. This is significant because the Act and the FTC's regulations contemplate that full warrantors may limit their warranties by owner rather than a stated duration. Section 700.6 provides that a full warrantor may limit its warranty by either first purchaser ownership or a stated duration, but not both:

> .... However, where the duration of a full warranty is defined solely in terms of first purchaser ownership there can be no violation of section 104(b)(4), since the duration of the warranty expires, by definition, at the time of transfer. No rights of a subsequent transferee are cut off because there is no transfer of ownership "during the duration" of (any) warranty. Thus, these provisions do not preclude the offering of a full warranty with its duration determined exclusively by the period during which the first purchaser owns the product, or uses it in conjunction with another product. For example, an automotive battery or muffler warranty may be designated as "full warranty for as long as you own your car."

16 C.F.R. § 700.6(b).

Section 701.3's requirement that warrantors conspicuously disclose "the identity or the party or parties to

whom the written warranty is extended" and further disclose whether "the enforceability of the written warranty is limited to the original consumer purchaser or is otherwise limited to a person other than every consumer owner during the term of the warranty," when read in conjunction with 700.6, simply means that if a full warrantor wishes to extend a warranty only to the first purchaser, the warrantor must do so conspicuously.

The Minnesota Court of Appeals interpreted section 701.3 to mean: (a) that Chrysler could validly limit its 7/70 warranty to a "first purchaser"; and (b) that Chrysler's $150 fee for "extending" the original warranty to the used car purchaser did not, therefore, violate the Act. Neither the Act nor its regulations support this conclusion.

Section 700.6 allows full warrantors, like Midas, to limit their full warranties "for as long as you own your car." This limitation does not violate the Act because the mufflers are marketed and sold with a clear, conspicuous and unambiguous message to consumers: this warranty lasts only so long as the original purchaser owns the car.

Section 701.3, like section 700.6, therefore contemplates warrantors like Midas that extend their warranties solely and exclusively to original purchasers. Section 701.3 simply requires that warrantors who so limit their warranties to do so conspicuously. It does not, as the Minnesota Court of Appeals held, provide an affirmative defense for a claim under Section 2302(c) of the Act.

To illustrate, it is possible that Chrysler could comply with section 701.3 of regulations, but still violate section 2302(c) of the Act. For example, Midas could offer a warranty that "extends for as long as you own your car, but the warranty will end if you fail to have your exhaust system inspected annually by an authorized Midas dealer who may charge a $20 fee for this service." The warranty will comply with section 701.3 so long as Midas conspicuously discloses the term "for as long as you own your car." As it does so it

will not be subject to a deceptive practices action brought by the FTC. The warranty, however, plainly violates section 2302(c) because it conditions warranty coverage on the payment of a fee for a corporate-branded service. The conditional fee would nevertheless expose Midas to a private action under section 2302(c).

Ms. Haas acknowledges that section 700.6 makes no reference to "limited" warranties. The Minnesota Court of Appeals concluded from this negative implication that, according to the FTC, a limited warrantor may limit its warranty by both time and ownership, that is: "this engine and powertrain warranty ends at the earlier of seven years; 70,000 miles; or for as long as you own your car." Even if such a limitation was authorized by the regulations, this is not the issue here. The issue here is whether a consumer who purchases a used good and is charged a fee for continuing the original limited warranty can recover that fee. This is an entirely separate question that can only be answered by determining whether Ms. Haas acquired the vehicle "during the duration" of the "written" warranty. If she did, then she has a claim under 2302(c). If she did not, then she doesn't.

C. The Legislative History of the Act and Public Policy Support Requiring Warrantors to Honor Their Original Warranties for Their Original Stated Duration

The Act's definition of consumer together with the public policy of prohibiting warrantors from marketing goods based on a stated duration but then in the text of the warranty limiting that coverage to the "first purchaser" warrant review of this case. Section 700.6 reflects this policy by prohibiting full warrantors from, for example, warranting: "this muffler is fully warranted for 70,000 miles or as long as you own your car." Even if a warrantor "conspicuously disclosed" this restriction in accordance with section 701.3 above, the dual

duration would violate section 700.6 because of the consumer confusion it would create and because warranty rights would be "cut off" by the transfer. For the same reasons that section 700.6 prohibits full warrantors from limiting their warranties in terms of duration and ownership–consumer confusion and a "cut off" of warranty rights upon transfer–the policy of the Act should prohibit such a practice by limited warrantors.

Chrysler claims that its provision requiring a used car purchaser to pay $150 to its dealer within 30 days of acquiring a vehicle at the pain of losing the original warranty rights is just another valid "limitation" on the warranty. This provision, however, does not limit what is and is not covered, but defines who is and is not covered by whether they pay Chrysler $150 within 30 days of acquiring the vehicle. It is this type of "hook" or "tie" that Congress intended to prohibit by adopting section 2302(c) and including used goods purchasers in the Act's definition of consumer.

Chrysler has now obtained a judicial determination that allows it to continue to broadly market its vehicles based on the duration of its warranty, but then in the fine print of the warranty cut off the rights of used car purchasers who acquire their vehicles during the duration of that warranty. The Minnesota Court of Appeals' decision gives license to a warranty practice intended solely to: (a) generate additional revenues for Chrysler and its dealers by charging consumers a service fee as a condition to Chrysler honoring its original warranty obligations; and (b) provide Chrysler a means to escape the warranty representations upon which it marketed its cars when a second buyer fails to pay the fee within 30 days of acquiring the vehicle.

One of the primary purposes of the Act was to combat automobile warranties that were "artfully contrived" to limit coverage to all but the most sophisticated consumers. Although Chrysler itself recognized the folly of the OCPP warranty and discontinued it, many consumers have suffered and continue to suffer from the practice. Chrysler continues

to charge the service fee and continues to deny warranty rights to those who have failed to pay it. The Magnuson Moss Act provides the only means for their redress.

CONCLUSION

For the reasons set forth above, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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STATE OF MINNESOTA

IN SUPREME COURT

C7-99-1921

Janine K. Haas,. individually and as Representative for all others similarly situated,

Petitioner,

vs.

DaimlerChrysler Corporation, et al.,

Respondents.

ORDER

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the petition of Janine Haas for further review be, and the same is, denied.

IT IS FURTHER ORDERED that the request of DaimlerChrysler Corporation, et al., for cross-review be, and the same is, denied.

Dated: August 22, 2000

BY THE COURT:

s/_____

Alan C. Page
Associate Justice

BLATZ, C.J., GILBERT and LANCASTER, J.J., took no part in the consideration or decision of this case.

TO: The Supreme Court of the State of Minnesota:

The Petitioner, Janine Haas, requests Supreme Court review of the above entitled decision of the Court of Appeals upon the following grounds:

1. Legal Issues and Their Resolution by the Court of Appeals

A. Does Chrysler's warranty requiring third-party purchasers to register and pay Chrysler a $150 fee within 30 days of acquiring a used vehicle as a condition to Chrysler's extending the vehicle's original express warranty rights violate Minn. Stat. § 336.2-318 by "limiting" or "excluding" its extension of original warranty rights to third parties?

The Court of Appeals held in the negative.

B. Does Chrysler's $150 fee for the "service" of transferring the express warranty and its requirement that consumers pay the fee to "an authorized Chrysler dealer" "within 30 days" of acquiring the vehicle or lose the original warranty rights violate the Magnuson Moss Act's prohibition on warranties that are conditioned on the consumer's payment of a fee for a "good or service...that is identified by brand or corporate name"?

The Court of Appeals held in the negative.

2. Criteria of the Rule Relied Upon to Support the Petition

Ms. Haas seeks review pursuant to Rule 117, subd. 2(d) of the Rules of Appellate Procedure and Rule 12 of the Rules of Civil Procedure. The resolution of the questions presented

has statewide and nationwide impact for all consumers, specifically third-party purchasers of used goods under express warranty. A decision by the Supreme Court in this case will allow the Court to develop and clarify the law relating to Minn. Stat. § 336.2-318. The issues here, particularly the application of 2-318 to consumer goods, will likely recur,[1] as the published Court of Appeals decision provides that a consumer injured by a warrantor's illegal contract has no cause of action unless he or she can also show a breach of warranty.

3. Statement of the Case

In 1995, Ms. Haas purchased a used 1994 Chrysler New Yorker with 25,541 miles from Respondent Bloomington Chrysler Plymouth. As a condition to extending her the vehicle's original, express, seven-year, 70,000 mile warranty on the engine and drivetrain, Bloomington Chrysler Plymouth charged Ms. Haas $150 for the "service" of "transferring" the warranty. Chrysler's warranty provided that Ms. Haas could acquire the original warranty rights only if she registered with Chrysler and paid a $150 transfer fee to an "authorized Chrysler Corporation dealer" "within 30 days" of purchasing the vehicle. (A-24.) Ms. Haas claims that the warranty violates both state and federal law by conditioning Chrysler's original express warranty obligations on her payment of a $150 fee. Chrysler claims the original 7/70 warranty was limited exclusively to the "first buyer/owner." The Court of

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[1] A related case, Orvik v. DaimlerChrysler, No. CT 00-003592, is currently venued in Hennepin County. In Orvik, the consumer, Merlin Orvik, acquired a Chrysler vehicle during the original 7/70 drivetrain warranty period but was unaware of and failed to pay the $150 transfer fee within 30 days. Chrysler denied warranty coverage because Mr. Orvik failed to pay the fee and thus was not in privity with Chrysler. Mr. Orvik ultimately paid Chrysler $1600 to repair his vehicle's transmission.

Appeals affirmed the District Court's Order dismissing Ms. Haas's Complaint for failure to state a claim. (A-1; A-6.)

4. Argument in Support of Petition

A. UNDER 2-318, CHRYSLER CANNOT REQUIRE PRIVITY AND CHARGE A FEE AS A CONDITION TO HONORING ITS EXPRESS WARRANTY OBLIGATIONS

Minnesota Statutes, section 336.2-318 extends all original warranties to all persons in the stream of commerce and abolishes privity as a defense to a breach of warranty claim:

> A seller's warranty whether express or implied extends to any person who may reasonably be expected to use, consume or be affected by the goods and who is injured by breach of the warranty. A seller may not exclude or limit the operation of this section.

Although not previously argued by any party or the District Court, the Court of Appeals held that Ms. Haas cannot state a claim under 2-318 because she was not "injured" by a "breach" of the warranty. The Court of Appeals relied on the language in the first sentence of 2-318. Ms. Haas's 2-318 claim, however, is based not on the first sentence of 2-318, but on the second sentence, which provides: "A seller may not exclude or limit the operation of this section." (See A-19.) The Court of Appeals thus failed to recognize that Ms. Haas's 2-318 claim does not require a breach of the warranty.[2]

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[2] Ms. Haas separately asserts that Chrysler has breached its "Contract," see Minn. Stat. § 336.1-201(11) ("contract" includes all, including statutory, legal obligations), by (a) requiring a privity

Ms. Haas claims that Chrysler's warranty limits her rights under 2-318 by requiring her to pay a $150 fee and enter into a privity relationship as a condition to extending the original, express, 7/70 warranty. Third-party purchasers are entitled to these rights as a matter of law by "operation" of 2-318. B. Clark & C. Smith, The Law of Product Warranties ¶ 10.02[1],[2] (1984) (under Minnesota's version of 2-318, express warrantor of consumer goods cannot market its product based on the duration of its warranty and then inconsistently attempt to limit that warranty to the "first purchaser") (A-28 - A-31). . Furthermore, the Code expressly allows Ms. Haas to bring this action and recover her transfer fee for "any violation" of its provisions:

> Any right or obligation declared by this chapter is enforceable by action unless the provision declaring it specifies a different and limited effect.

Minn. Stat. § 336.1-106(2); see also, Minn. Stat. § 336.1-103.

Although in most cases consumers will not bring an action until the seller "breaches" by denying warranty coverage, in most cases the seller does not broadly market its product based on the duration of its express warranty and then in the text of the warranty threaten to deny that coverage unless the consumer pays a $150 fee within 30 days. Simply stated, Chrysler cannot charge third parties a $150 fee as a condition to transferring rights that extend by operation of law. In contrast, the Court of Appeals' decision presently allows consumer goods warrantors to alter third-party purchasers' statutory rights in the fine print of their warranties. This view was rejected by this Court in Lloyd F.

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relationship and (b) charging a fee to create that relationship before agreeing to repair the vehicle without charge as is represented in its warranty. (Count III at A-20.)

Smith Company Inc. v. Den-Tal-Ez, Inc., 491 N.W.2d 11, 16 n. 6 (Minn. 1992) (commenting that the rights and duties of a third party may not be adversely varied by an agreement to which he is not a party or by which he is not otherwise bound).

In sum, a decision by the Supreme Court will allow the Court to clarify and develop the law relating to 2-318. 2-318 is a broad remedial consumer statute that extends all original warranties to all third parties and abolishes the defense of privity. The Court of Appeals' decision, however, ignores the effect of 2-318. The decision allows warrantors like Chrysler to unilaterally require privity and charge a fee as a condition to extending their original express warranties. Because Ms. Haas's claim for relief can be granted under 1-106 or equitable principles of recission and reformation, this Court should reverse the Court of Appeals.

B. CHRYSLER'S WARRANTY VIOLATES THE MAGNUSON MOSS ACT BY CONDITIONING ITS LIMITED WARRANTY COVERAGE ON THE CONSUMER'S PAYMENT OF A FEE FOR A SERVICE

Ms. Haas seeks review of her 15 U.S.C. § 2302(c), "limited" warranty claim.[3] Limited warranties violate 2302(c) if they "condition" warranty coverage on the consumer's purchase "of a good or **service**...that is identified by brand or corporate name." 15 U.S.C. § 2302(c). See also, Rustevader, FTC Docket No. 9274 (May 24, 1996)(FTC charged that limited warranty conditioned on fee-for-service inspections performed by authorized dealers violated 2302(c)). Because Chrysler's 7/70 warranty is expressly conditioned on the

[3] Ms. Haas does not seek review of her "full" warranty claim under 15 U.S.C. § 2304(b). This claim charged that Chrysler's warranty, although designated a limited warranty, was in fact a "full" warranty because it meets the full warranty criteria set forth in 2304(a).

consumer's payment of a fee for a "service" provided by an "authorized Chrysler dealer" (A-24), it violates 2302(c).

The Court of Appeals accepted Chrysler's argument that its original 7/70 warranty was validly limited to the "first buyer/owner." The facts Ms. Haas alleges, however, show that despite the language in its warranty booklet, **Chrysler's original warranty continued unabated** after the "first buyer/owner" sold the car to Bloomington Chrysler Plymouth. Ms. Haas acquired the vehicle from Bloomington Chrysler Plymouth, the second owner, with 44,459 miles remaining on **the original warranty**. Chrysler agreed to **continue the original 7/70 warranty**, but only after Ms. Haas paid its "authorized dealer" a $150 fee for the "service" of transferring the warranty. In return for her payment of the fee, Ms. Haas received nothing more than Chrysler's agreement to honor its original express warranty obligations..

A point ignored by both lower courts is that Magnuson Moss's definition of "consumer" includes and protects purchasers of used goods who, like Ms. Haas, acquire goods "during the duration" of the **original warranty**. 15 U.S.C. § 2301(3). Section 2302(c) therefore prohibits Chrysler from conditioning its warranty coverage on Ms. Haas's payment of $150 for any "service," including the service of transferring the **original warranty**. The Court of Appeals' acceptance of Chrysler's red herring argument that FTC regulations relating to warranty disclosure requirements somehow authorizes its violation of 2302(c) thus has no merit. The issue under 2302(c) is not what Chrysler did or did not disclose, but what it did--condition original warranty coverage on the payment of a fee by a consumer protected by the Magnuson Moss Act.

Dated: July 5, 2000

/s
William B. Butler (227912)

STATE OF MINNESOTA
IN COURT OF APPEALS
C7-99-1921

Janine K. Haas, individually and as Representative for all others similarly situated,
Appellant,

vs.

DaimlerChrysler Corporation, DaimlerChrysler Motors Corporation, and Bloomington Chrysler Jeep Eagle, Inc., individually and as representative for other similarly situated Chrysler dealerships,
Respondents.

Filed June 13, 2000
Affirmed
Schumacher, Judge

Hennepin County District Court
File No. 999707

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Paul A. Banker, Blake W. Duerre, Arthur, Chapman, Kettering, Smetak & Pikala, 500 Young Quinlan Building, 81 South Ninth Street, Minneapolis, MN 55402 (for respondents)

Considered and decided by Anderson, Presiding Judge, Schumacher, Judge, and Peterson, Judge.

SYLLABUS

An automobile manufacturer's clearly stated warranty limitation requiring the second purchaser of a vehicle to pay a $150 fee to transfer the remaining warranty coverage does not violate either the federal Magnuson-Moss Warranty Act or the Uniform Commercial Code.

OPINION

SCHUMACHER, Judge

The district court dismissed the lawsuit of appellant Janine K. Haas, individually and as representative for all others similarly situated, for failure to state a claim on which relief could be granted. We affirm.

FACTS

Haas bought a used Chrysler vehicle from respondent Bloomington Chrysler Plymouth Jeep Eagle, Inc. In keeping

with corporate policy, the dealership charged Haas $150 to transfer to her the remainder of the factory warranty on the vehicle. Haas brought a class action lawsuit alleging that the fee violated both the Magnuson-Moss Warranty Act and section 2-318 of the Uniform Commercial Code. The dealership, along with respondents DaimlerChrysler Corporation and DaimlerChrysler Motors Corporation (collectively, "Chrysler"), moved to dismiss the lawsuit, and the district court granted the motion.

ISSUES

1. Does the $150 transfer fee violate the Magnuson-Moss Warranty Act's prohibition on conditional warranties?

2. Is the $150 transfer fee an unlawful attempt to "limit or exclude" Chrysler's warranty obligations in violation of section 2-318 of the UCC?

ANALYSIS

In reviewing a case dismissed for failure to state a claim, the only question before us is whether the complaint sets forth a legally sufficient claim for relief. ***Elzie v. Commissioner of Pub. Safety***, 298 N.W.2d 29, 32 (Minn. 1980). We exercise de novo review of such a dismissal. ***Leonard v. Northwest Airlines, Inc.***, 605 N. W.2d 425, 428 (Minn. App. 2000), ***review denied*** (Minn. Apr. 18, 2000).

1. Haas contends that Chrysler violated section 2302(c) of the Magnuson-Moss Warranty Act, which prohibits placing conditions on warranties:

> No warrantor of a consumer product may condition his written or implied warranty of such product on the consumer's using, in connection with such

> product, any article or service (other than article or service provided without charge under the terms of the warranty) which is identified by brand, trade, or corporate name * * *.

15 U.S.C. § 2302(c) (1994).

Chrysler's warranty provides that it extends only to the first buyer of the vehicle:

> **Subsequent Buyer/Owner**
>
> The Chrysler "**Owner's Choice Protection Plan**" Warranty is extended only to the first buyer/owner of the vehicle. If you're the second buyer/owner of the vehicle, you may transfer the warranty coverage under the "**Owner's Choice Protection Plan**" Warranty and the "**7/100 Corrosion Warranty**" * * * into your name.
>
> To transfer the warranty, you must have an authorized Chrysler Corporation Dealer process a "**Transfer of Coverage Application**" for you. The cost for this service is $150. You pay this fee directly to the dealer. You must apply for a coverage transfer within 30 days from the date you buy the vehicle. As a Second Buyer/Owner, you may transfer only the remaining "**Owner's Choice Protection Plan**" coverage which the first buyer/owner elected, together with the remaining portion of the "**7/100 Corrosion Warranty.**"

But the regulations promulgated by the Federal Trade Commission interpreting the Magnuson-Moss Act expressly recognize that a limited warranty may be limited to the initial

purchaser of the item. In such a case, the seller must disclose the

> identity of the party or parties to whom the written warranty is extended, *if the enforceability of the written warranty is limited to the original consumer purchaser* or is otherwise limited to persons other than every consumer owner during the term of the warranty.

16 C.F.R. § 701.3(a)(1) (1999) (emphasis added); ***see also*** 15 U.S.C. § 2302(a)(2) (1994) (FTC rules may require warranty to disclose the "identity of the party or parties to whom the warranty is extended"). Indeed, Haas concedes that a seller may offer a limited warranty.

Haas argues that the warranty is not conspicuously limited to the first purchaser as required by section 2302(a) of the Act because it offers to "transfer" any "remaining" warranty coverage to a second buyer on the payment of the $150 fee. According to Haas, "[i]f Chrysler in fact extended the * * * warranty only to the first purchaser, there could be no 'remainder' of the warranty to 'transfer.'" Haas therefore argues that the warranty is not really a limited warranty, but a warranty that conditions its coverage on the payment of a $150 fee by a second buyer.

This semantic argument is too weak to overcome the clear language of the warranty that it is "extended only to the first buyer/owner of the vehicle." Despite Haas's attempts to recast the warranty's limitation as a condition, the warranty provision is a legitimate limitation on the duration of the warranty as permitted by both the Magnuson-Moss Act and the regulations interpreting it.

Haas also contends that Chrysler may not limit the warranty to the initial purchaser because the warranty is not really a limited warranty, but is instead a "full warranty." Section 2303 of the Magnuson-Moss Act and federal regulations both require that a seller conspicuously designate a written warranty as either a "full warranty" or a "limited warranty." 15 U.S.C. § 2303 (1994); 16 C.F.R. § 700.6(a) (1999). A full warranty is subject to restrictions that do not apply to a limited warranty. ***See*** 15 U.S.C. § 2304 (1994) (setting forth requirements for warranties that "meet the Federal minimum standards for warranty"); 15 U.S.C. § 2303(a)(1) (providing that warranty that "meets the Federal minimum standards for warranty set forth in section 2304" be designated "full" warranty).

Haas contends that because the warranty is really a full warranty, it violates the provision of section 2304(b)(1) that forbids a warrantor from imposing "any duty other than notification upon any consumer as a condition" of warranty coverage. 15 U.S.C. § 2304(b)(1). Haas contends that Chrysler impermissibly placed on her the "duty" of paying $150 in order to receive the benefit of the warranty.

Haas relies on ***Hughes v. Segal Enterprises, Inc.***, 627 F. Supp. 1251 (W.D. Ark. 1986), to argue that where a warrantor labels the warranty in a misleading or deceptive way, courts will construe the warranty in the light most favorable to the consumer to determine whether it is a full or limited warranty. In ***Hughes***, however, the defendant conceded that it "fail[ed] to designate the warranty as a 'limited' warranty." ***Id.*** at 1238. In contrast, no reasonable consumer could believe the Chrysler warranty here was a full warranty. The phrases "limited warranty" and "limited warranties" appear at least 34 times in the warranty, including 4 times in the table of contents and at least 7 times in captions printed in reverse relief (white on black) type larger than the

type used for the body of the warranty and set off from the body of the warranty by both spacing and graphic elements (thick black bars on which the text is printed). The warranty thus satisfies the statutory requirement that it be conspicuously designated a limited warranty. 15 U.S.C. § 2303(a)(2); ***see also*** 16 C.F.R. § 700.6(a) (requiring that "designation or designations should appear clearly and conspicuously as a caption, or prominent title, clearly separated from the text of the warranty."). ***Hughes*** is thus inapplicable.

Chrysler conspicuously designated its warranty a limited warranty and legitimately restricted its duration to the initial owner of the vehicle. As a result, Haas had no statutory right to receive the remainder of the warranty, and the $150 transfer fee violated no provision of the Act. The district court did not err in finding that Haas failed to state a claim for which relief could be granted under the Magnuson-Moss Act.

2. Haas argues that section 2-318 of the UCC prevents Chrysler from charging the $150 transfer fee. Minnesota's version of that statute provides as follows:

> A seller's warranty whether express or implied extends to any person who may reasonably be expected to use, consume or be affected by the goods and who is injured by breach of the warranty. A seller may not exclude or limit the operation of this section.

Minn. Stat. § 336.2-318 (1998). Haas contends that the statute by its terms extends the warranty to persons who would reasonably be expected to use the vehicle, including second-hand purchasers such as she. According to Haas, because Chrysler cannot "exclude or limit" the operation of this statute, it cannot charge a fee to transfer the warranty.

Instead, Haas contends, the warranty transfers by operation of law.

The flaw in Haas's argument is that it confuses the first-party right to receive services under the warranty with the third-party statutory right to recover for damages caused by breach of the warranty. As Haas concedes and the statute's caption reflects, this provision of the UCC deals with "Third Party Beneficiaries of Warranties Express or Implied." Minn. Stat. § 336.2-318; ***see Essling v. Markman***, 335 N.W.2d 237, 240 n.2 (Minn. 1983) (statutory title may be considered when attempting to ascertain legislature's intent). Section 2-318 provides that the "seller's warranty whether express or implied extends to any person * * * *who is injured by breach of the warranty.*" Minn. Stat. § 336.2-318 (emphasis added). Until Haas is injured by a breach of the warranty, section 2-318 grants her no third-party beneficiary rights.

The warranty in this case specifically provides that it "is extended only to the first buyer/owner of the vehicle." The warranty goes on to provide that the vehicle's second buyer can transfer any remaining warranty coverage by having the Chrysler dealer submit a "Transfer of Coverage Application" at a cost to the second purchaser of $150.

Those contractual terms define and limit any rights Haas may have as a third-party beneficiary of the warranty. As the Minnesota Supreme Court has observed, the

> rights of third-party beneficiaries "depend upon, and are measured by, the terms of the contract." ***Brix v. General Accident & Assurance Corp.***, 254 Minn. 21, 24, 93 N.W.2d 542, 544 (1958); Restatement (Second) of Contracts § 309 curt. b (1981) (stating that a third-party beneficiary's rights are subject to limitations in the contract).

In re Hennepin County 1986 Recycling Bond Litig., 540 N. W.2d 494, 499 (Minn. 1995).

Because the warranty specifically provides that subsequent purchasers may only assume any remaining warranty coverage on the payment of a $150 fee, charging Haas the $150 fee was not a "breach" of the warranty. Without a breach of the warranty, Haas cannot be a person "who is injured by breach of the warranty." As a result, section 2-318 does not grant Haas the right to assume the warranty without paying the $150 transfer fee. The district court therefore did not err in concluding that Haas failed on this point to state a claim for which relief could be granted.

Chrysler has moved in the district court for sanctions pursuant to Minn. R. Civ. P. 11 against Haas and asks us to remand the case so that the district court may resolve that motion. Haas's lawsuit, however, presented novel and colorable legal issues. Because we find as a matter of law that Haas did not violate rule 11, we need not remand the case to the district court.

DECISION

The district court correctly ruled that Haas failed to state a claim on which relief could be granted.

Affirmed.

STATE OF MINNESOTA DISTRICT COURT
COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

Janine K. Hass, individually and as Representative for all other similarly situated,

Plaintiff,

vs. **ORDER**

File No. 99-9707

DIAMLERCHRYSLER CORPORATION, DIAMLERCHRYSLER MOTORS CORPORATION, and BLOOMINGTON CHRYSLER PLYMOUTH JEEP EAGLE, INC. individually and as representative for other similarly situated Chrysler dealerships,

Defendants.

The above-entitled matter came before the undersigned on September 24, 1999, upon defendant's motion to dismiss. Daniel J. Biersdorf, Esq. and William B. Butler Esq., appeared on behalf of Plaintiff. Richard B. Solum, Esq., Kathy A. Wisniewski, Esq. and Allan M. Huss, Esq. appeared on behalf of Defendants DiamlerChrysler Corporation and DiamlerChrysler Motors Corporation. Paul A. Banker Esq., appeared on behalf of Defendant Bloomington Chrysler Plymouth Jeep Eagle, Inc.

Based upon the arguments of counsel and all the files, records and proceedings herein:

IT IS HEREBY ORDERED:

1. Defendant's motion to dismiss is granted.

Let the attached memorandum be incorporated by reference.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT

Dated: 10/18/99

s/
Robert H. Lynn
Judge of District Court
Fourth Judicial District

Facts

On or about July 13, 1995 Plaintiff Janine Hass purchased a used 1994 Chrysler New Yorker for defendant Bloomington Chrysler Plymouth Jeep Eagle. Plaintiff was not the first buyer or owner of this vehicle. At the time of her purchase, Ms. Haas paid a mandatory $150.00 transfer fee to the dealer to acquire the outstanding warranty rights to the vehicle. Plaintiff brings this action individually, and on behalf of all others who are similarly situated, alleging violations of the Magnuson Moss Warranty Act, 15 U.S.C. §§ 2301-2312 (1999). Plaintiff claims this act prohibits conditional warranties and "tying" arrangements. Plaintiff also alleges violations of the Uniform Commercial Code, prohibiting sellers and manufacturers from limiting or excluding the operation of their express warranties. Plaintiff further alleges violations of statutory and common law of 29 states, including Minnesota, abolishing privity as a defense to a breach of contract action based on an express warranty.

Analysis

Pleadings that fail to state a claim upon which relief can be granted must be dismissed. In re Milk Indirect Purchaser Antitrust Litigation, 588 N.W.2d 772, 774 (Minn.Ct.App. 1999)(citing Minn.R.Civ.P 12.02(e)). In Count I of Plaintiff's Complaint, Ms. Haas specifically alleges violations of 15 U.S.C. §2302(c), and 15 U.S.C. §2304(b)(1). The Magnuson-Moss Warranty Act was Congress's first comprehensive attempt to deal at the federal level with problems of consumer warranties. Bolens v. Redman Homes, Inc., 748 F.2d 1058, 1061 (5th Cir. 1984).

> It establishes extensive warranty disclosure requirements which should aid the consumer in evaluating the worth of the proposed warranty prior

> to purchase, and insure the availability of an unambiguous listing of the obligations undertaken by the warrantor in the event that a dispute arises as to these responsibilities. Secondly, the Act creates a regulatory scheme directed at the actual content of written warranties. It sets forth minimum standards which must be met before a warranty may be designated a "full" warranty, and requires that all others be clearly labeled as "limited" warranties. It restricts a warrantor's ability to condition his obligations upon the buyer's use of specified support products, and severely curtails the right to limit or disclaim implied warranties. Finally, the Act establishes a system of formal and informal enforcement procedures and permits an aggrieved consumer to bring an action for violation of the Act in either federal or state court.

Robert C. Denicola, The Magnuson-Moss Warranty Act: Making Consumer Product Warranty a Federal Case, 44 FordhamL.Rev. 273 (1975). Taken as a whole, the Act is concerned primarily with eliminating deceptive warranty practices. Gorman v. Saf-T-Mate, Inc., 513 F.Supp 1028 1031 (1981). Here, there is no support for the proposition advanced by Plaintiff. This Court, after reading the relevant statutes on their face, fails to find Plaintiff's cause of action. On a plain reading of the statutes under which Plaintiff brings this action, nowhere can it be found actionable to charge a service fee to extend an original warranty to a subsequent purchaser. Nor is plaintiff able to cite any case law so holding.

Count II alleges a violation of Minn.Stat. §336.2-318. In Minnesota Mining and Manufacturing co., v. Nishika Ltd., 565 N.W.2d 16, 20 (Minn. 1997), the Court reasoned that the genesis of Minn.Stat. §336.2-318 was to protect consumers against dangerous products. Additionally, Minn.Stat. §336.2-318 acts only to extend existing warranty rights

existing within a contract to certain third parties. Rynders v. E.I. Du Pont, De Nemours & Co., 21 F.3d 835, 839-40 (8th Cir. 1994). Minn.Stat. §336.2-318 acts not only to extend any existing warranties to third-parties, but also act to extend warranty disclaimer/limitations to third parties. Transport Corp. of America, Inc. v. International Business Machines Corp., Inc., 30 F.3d 953 958-60 (8th Cir. 1994). Here, the warranty provision plaintiff seeks to enforce is limited in its duration to the first purchaser. After a careful plain reading of the statute on its face, this Court finds that Minn.Stat. §336.2-318 does not limit a seller from requiring a fee to transfer any existing warranty to a subsequent purchaser. Further, there is no applicable case law supporting Ms. Haas' claim before this court.

In Count III of Ms. Haas' complaint, she alleges breach of contract arguing that since the $150.00 transfer fee is invalid, Chrysler had no contractual right to extract this payment from Plaintiff. This Court has already disagreed with the premise that the fee is invalid, thus this claim fails as well.

Conclusion

This Court after a careful reading of the statutes finds that plaintiff has failed to state a cause of action to Counts I, II and III. This Court dismisses this action pursuant to Minn.R.Civ.P 12.02(e) as to defendants DiamlerChrysler Corporation and DiamlerChrysler Motors Corporation and defendant Bloomington Chrysler Plymouth Jeep Eagle, Inc.

R.H.L.

VEHICLE PURCHASE ORDER

BLOOMINGTON CHRYSLER PLYMOUTH JEEP EAGLE

8000 PENN AVENUE SOUTH • BLOOMINGTON, MN 55431
612-883-9541

Stk #: 9917 Date: 7/12 Salesman: BROWN

Buyer Name: (Last) HAAS (First) JANINE (Middle) KAY

Address: 8885 HYLAND CRESCENT DR. BLOOM State: MN County: HENN Zip: 55437

Home Phone: 832-5376 Bus. Phone: Buyer DOB: 6/19/48 Co-Buyer DOB:

Buyer D.L. #: H-700-368-461-470 Co-Buyer D.L. #:

Insurance Co: LIBERTY MUTUAL Policy #:

TRADE ENTER MY ORDER FOR: New ☐ Used ☒ Demo ☐ Rental ☐

Trade-in to be as follows:

1990	TOYOTA	MAN 4DR LIFT	4DR	YEAR	CHECKED	DELIVERED ON OR ABOUT
JT3HD46F2LRH32705		TAN			7/15/91	

PRICE OF VEHICLE		
	MARKET VALUE	
	A REBATE OF $ _____ WAS APPLIED TO:	
	_____ THE DOWN PAYMENT	1700
	_____ SELECTED SPECIAL APR IN LIEU OF REBATE	
	NO REBATE	
YEAR OF USED CAR ACURA LEGEND COUPE		
BODY TYPE COUPE		
VEH. NO. JH4KA7665JC023586		
MILES 057DMH TAG 7/93		
COLOR RED	TOTAL	17000
	LESS ALLOWANCE FOR USED VEHICLE, AS APPRAISED	8500
	TAXABLE AMOUNT	8500
LEASE ACTUAL ☒ _____ UNKNOWN ☐ _____	TAX	552 50
	DOCUMENTARY ADMINISTRATION FEE	25 00
	LICENSE & FEES	337 50
	TOTAL CASH DELIVERED PRICE	9414 50
	LESS TOTAL DOWN PAYMENT	
	1470	150 00
		9565 50
	AMOUNT DUE ON DELIVERY	

EXHIBIT 1

DEALER'S DISCLAIMER OF WARRANTY

Any warranties on the VEHICLE are those of the manufacturer. All other than the WARRANTY and any guarantees or any kind, express or implied, including any implied warranty of MERCHANTABILITY or FITNESS FOR A PARTICULAR PURPOSE, are hereby disclaimed by the DEALER. No verbal statement, promise or agreement made by any employee of the DEALER shall be binding upon the DEALER unless reduced to writing and signed by an officer of the DEALER. Buyer's Signature

$150 Trade to Spouse thru Ins. Co. & Accts

Buyer's Signature

Date 7/12/91

ACCEPTED BY: BLOOMINGTON CHRYSLER-PLYMOUTH (DEALER)

IMPORTANT: I UNDERSTAND THAT THIS MAY BE A BINDING CONTRACT AND I MAY LOSE ANY DEPOSITS IF I DO NOT PERFORM ACCORDING TO ITS TERMS.

BEST AVAILABLE COPY

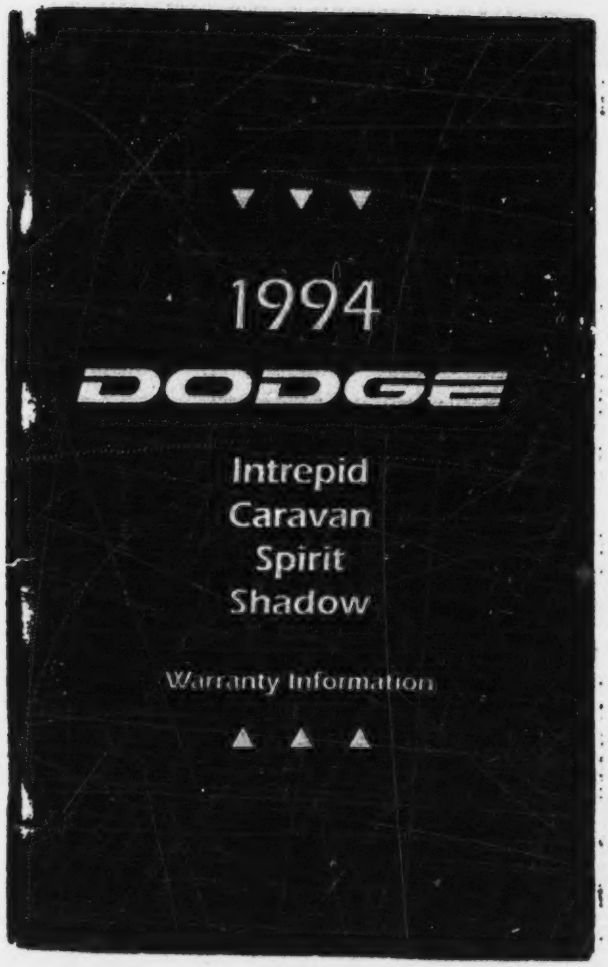
1994
DODGE
Intrepid
Caravan
Spirit
Shadow
Warranty Information

EXHIBIT
2

To Our Valued Customers:

This booklet explains the different warranties that may apply to your new vehicle. It explains exactly what's covered...how long each kind of warranty lasts...and what you must do to keep the warranties in force.

Your Chrysler "Owner's Choice Protection Plan" Warranty allows you to make a choice of which warranty coverage is right for you. As shown on the back of this Warranty Booklet, either a 3 year/36,000 mile basic warranty or a 12 month/12,000 mile basic warranty with 7 year/70,000 mile powertrain coverage applies to your vehicle. You may not choose both coverages. If you decide that the coverage you selected is not right for you, you have 30 days to return to your selling dealer to change your selection. Your 7/100 Anti-Corrosion, Federal Emission Control and California Emission Control (if applicable) coverages apply regardless of the choice you make.

You are responsible for properly maintaining and operating your new vehicle. Follow the instructions contained in the General and Scheduled Maintenance Service guidelines in your Owner's Manual. Regular scheduled maintenance is essential to trouble-free operation. A Maintenance Log is provided for your convenience on page 61 of this booklet. To insure your continued warranty coverage, you should keep track of scheduled maintenance either through routinely filling out your Maintenance Log or retaining receipts or other documentation. We recommend that you return to your Selling Dealer for all your maintenance service both during and after the warranty periods. Returning to your Selling Dealer will help assure your satisfaction and provide all your service needs.

airs required due to neglect, improper or inadequate mainte-
:e are not covered by your warranties.

Table of Contents on the next page shows you how the
:let is set up.

, a Glossary of Terms explains some of the special words
e used. And there's a section that explains how you get
anty service for your vehicle and how you should deal with
warranty problems.

· vehicle also comes with a brochure on Chrysler's "Cus-
:r Arbitration Board Program", which applies to your vehicle.

ıope that you'll read these booklets carefully.

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ossary of Terms

e are the definitions of some of the special words and
ses we use in this booklet.

ustment: A minor repair usually not requiring the replace-
t of parts. A refinement in factory fit, alignment or perfor-
ce.

norized Chrysler Corporation Dealer: A store that sells
services Dodge products under agreement with Chrysler.

sic Warranty": Our short term for your "Basic New Vehicle
ed Warranty".

ysler": Defined as Chrysler Corporation.

/sler MOPAR Part: A new or remanufactured part made by
r Chrysler, designated for use on Chrysler Corporation
cles, and distributed by Chrysler.

/sler Supplied Part: Either a part installed by Chrysler at
ime of manufacture or a Chrysler part installed by an autho-
l Chrysler Corporation Dealer. Any part that is not a
sler supplied part is a "Non- Chrysler Part".

rosion Warranty": Our short term for your "Anti-Corrosion
oration Limited Warranty".

[redacted]

"Emission Systems Warranties": Our short term for your two "Emission Control Systems Warranties".

First Buyer/Owner: The first legal owner or retail lessee of a Chrysler Corporation vehicle, other than a Chrysler Corporation Dealer who has bought the vehicle from Chrysler for resale to the public.

In-Service Date: See "Warranty Start Date", on page 7.

Odometer: The instrument in your vehicle that records the number of miles your vehicle has been driven.

Outer (Sheet-Metal) Panel: A sheet-metal panel that can be seen by a person walking around the vehicle and that is finish painted.

Owner's Choice Protection Plan: Is the coverage chosen by the first buyer/owner of the vehicle - either the "3/36 Basic and Vehicle Limited Warranty", or the "12/12 Basic and 7/70 Powertrain Limited Warranty".

"Owner's Manual": Our short term for your "Operating Instructions and Product Information" booklet; this booklet is part of the Owner's Literature Package that's shipped with your vehicle.

ssary of
ms . . . (Cont'd)

ration: A hole in any sheet metal panel, pillar or post.

ertrain: The parts, assemblies and components that to-
r provide the power to your vehicle; these include the
ıe, transmission/transaxle, differential and driveshaft
nbly.

ertrain Warranty: Our short term for your "Powertrain
ed Warranty".

uction Change: A change made in the design, manufac-
r assembly (etc.) of a Chrysler vehicle line as part of the
al product-development process.

Through: See "Perforation".

nd Buyer/Owner: The second legal owner or retail lessee
:hrysler Corporation vehicle. The Second Buyer/Owner is
NLY owner eligible to transfer a vehicle's "Owner's Choice
ction Plan" Warranty and "7/100 Corrosion Warranty" into
her name.

equent Buyer/Owner: The third or subsequent owner of a
ler Corporation vehicle. A Subsequent Buyer/Owner is
eligible to transfer the vehicle's "Owner's Choice Protection
Warranty and "7/100 Corrosion Warranty".

[redacted]

Warranty Start Date: The date on which the warranty coverages on your new Chrysler Corporation vehicle begin. This is the earlier of (1) the date you take delivery of your new vehicle, OR (2) the date the vehicle was first put into service (for example, as a dealer "Demo" or as a Chrysler Corporation company car).

our 1994 New Vehicle
imited Warranties

ng the terms of the Limited Warranties on your vehicle,
ysler covers the cost of all parts and labor needed to repair or
ist any Chrysler supplied item (except tires and the OKI
ular Telephone) that proves defective in material, workman-
or factory preparation.

ır Legal Rights Under Chrysler's Limited Warranties:

of the Chrysler Limited Warranties stated in this book are the
ly express warranties made by Chrysler applicable to the
hicle. These Limited Warranties give you specific legal rights
d you may also have other rights which vary from state to state.
u may have some implied warranties, depending on the state
which your vehicle is registered. For example, you may have—
An "implied warranty of merchantability", (that your vehicle
s reasonably fit for the general purpose for which it was sold);
or
An "implied warranty of fitness for a particular purpose' (that
your vehicle is suitable for your special purposes; if your
special purposes were specifically disclosed to Chrysler itself
not merely to the dealer) prior to purchase.)

ese implied warranties are limited, to the extent allowed by law,
he time period(s) covered by the written warranties set forth in
: booklet.

ne states do not allow limitations on how long an implied
ranty lasts, so the above limitations may not apply to you.

These warranty repairs or adjustments (parts and labor) will be made by your dealer at no charge using new or remanufactured parts. The OKI Cellular Telephone and your vehicle's tires are covered by a separate warranty included in your Owner's Literature Package.

Subsequent Buyer/Owner

The Chrysler "Owner's Choice Protection Plan" Warranty is extended only to the first buyer/owner of the vehicle. If you're the second buyer/owner of the vehicle, you may transfer the warranty coverage under the "Owner's Choice Protection Plan" Warranty and the "7/100 Corrosion Warranty" (see page 24) into your name.

To transfer the warranty, you must have an authorized Chrysler Corporation Dealer process a "Transfer of Coverage Application" for you. The cost for this service is $150. You pay this fee directly to the dealer. You must apply for a coverage transfer within 30 days from the date you buy the vehicle. As a Second Buyer/Owner, you may transfer only the remaining "Owner's Choice Protection Plan" coverage which the first buyer/owner elected, together with the remaining portion of the '7/100 Corrosion Warranty".

ır transferring dealer will provide you a receipt at the time you uest your transfer; when your application has been accepted Chrysler, your vehicle will then be covered by the unexpired ion of the "Owner's Choice Protection Plan", and the xpired portion of the "7/100 Corrosion Warranty".

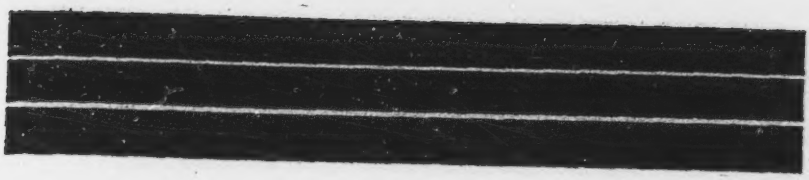
ou do not transfer the coverage, the only warranty applicable ıe vehicle for the second and subsequent owner is the 12/12 ic Warranty described on page 18. The 36 month Anti- rosion warranty described on page 24, and the 3 year/36,000 Air Bag Warranty (where equipped) described on page 20 inues to apply. There is no further powertrain coverage.

u are the third or subsequent buyer/owner, you receive only emainder of the 12/12 Basic Warranty, the 36 month Anti- osion Warranty and the 3/36 Air Bag warranty, EVEN IF the cle you've bought is still covered by the "Basic Warranty".

erage under your Federal Emission System Warranty and ornia Emissions System Warranty (if applicable) extends to wners of the vehicle for the time and mileage shown in those rages.

ifications & Alterations

ain changes that you might make to your vehicle do not, in of themselves, void the limited warranties described in this let. Such changes may include, but are not limited to:



-- the installation of non-Chrysler parts, components or equipment (such as a non-Chrysler radio or speed control);

-- the modification of the vehicle or one or more of its components; and

-- the use of special (non-Chrysler) materials or additives.

However, your Chrysler Limited Warranties don't cover any part which is not a Chrysler supplied part. These warranties also don't cover the costs of any repairs or adjustments that might be caused by or needed because of the use or installation of non-Chrysler parts, equipment, materials or additives.

Examples of the types of alteration that are not covered include, but are not limited to the installation of accessories (except for genuine MOPAR accessories approved by Chrysler for dealer installation) such as sun roofs, window tinting, trailer hitches, theft alarm systems and air conditioning systems, rustproofing or other protection products, or the use of any refrigerant other than that approved by Chrysler.

ring

r warranties cover the cost of towing your vehicle to the nearest
/sler Corporation Dealer, if your vehicle can't be driven because
ıe failure of a covered part.

Warranty Repairs - Components Exchanges

In the interest of customer satisfaction, Chrysler may offer exchange service on some vehicle components. This service is intended to reduce the amount of time your vehicle is not available for use due to repairs. Components used in exchange service may be new, remanufactured, reconditioned or repaired, depending on the component involved.

All exchange components used meet Chrysler standards and have the same warranty as new components. Examples of the types of components that might be serviced in this fashion include: engine assemblies, transmission assemblies, instrument cluster assemblies, radios, tape decks, speedometers and powertrain control modules.

Also, in cooperation with worldwide efforts to control suspected ozone depleting agents, the EPA requires the capture, purification and reuse of automotive air conditioning refrigerant gases. As a result, any repairs to the sealed portion of your air conditioning system (if equipped) may involve the installation of purified reclaimed refrigerant.

Pre-Delivery Service

Defects in or damage to the mechanical, electrical, sheet metal, paint, trim and other components of your vehicle may occur at the factory or while it is being transported to the dealer.

Normally, any defect or damage occurring during assembly is detected and corrected at the factory during the inspection process. In addition, dealers are obligated to inspect each

:le before delivery. They repair any uncorrected factory :ts or damage and any transit damage detected before the :le is delivered to you.

luction Changes

sler and its dealers reserve the right to make changes in :les built and/or sold by them at any time without incurring)bligation to make the same or similar changes on vehicles ously built and/or sold by them.

l Loss, Salvage, Junk Vehicles

/ehicle that is declared to be a total loss by any insurance)any, is rebuilt after being declared to be a total loss, or is d a certificate of title indicating that it is designated as age", "junk", "rebuilt" or words of similar impact will no r have any warranty coverage.

Optional Service Contract

Chrysler's optional Service Contracts offer extremely valuable repair-cost protection over and above the mited warranties detailed in this booklet. Several plans ire available; they cover different periods (time and nileage) and different sets of components. Ask your Chrysler Corporation Dealer for details. Chrysler Service Contracts are not available in U.S. possessions or erritories.

Your 3/36 New Vehicle Limited Warranty ("3/36 Basic Warranty")

COVERAGE APPLICABLE ONLY IF THE FIRST BUYER/ OWNER HAS CHOSEN 3/36 COVERAGE AND THE 3/36 BOX IS SELECTED ON THE BACK OF THIS BOOKLET.

What's Covered:

The "Basic Warranty" covers every Chrysler supplied part of your vehicle, EXCEPT its tires and OKI Cellular Telephone. The OKI Cellular Telephone and the tires are covered by separate warranties offered by their makers. See these warranty statements in your Owner's Literature Package.

The "Basic Warranty" covers your vehicle ONLY IF (1) it's registered in the U.S., (2) it's driven mainly in the U.S. or Canada, and (3) it's operated and maintained in the manner described in your "Owner's Manual".

NOTE: Chrysler will not provide warranty coverage for vehicles exported from the U.S. or Canada to foreign sales areas by individuals or organizations other than Chrysler or its authorized distributors unless these vehicles were previously registered and actually used in the U.S. or Canada prior to their export, except as required by law.

Those vehicles registered to U.S. government officials or military personnel on assignment are exempt from this policy. Vehicles registered and operated in U.S. possessions and territories are subject to U.S. warranties as applicable.

/36 Basic Warranty") . . . (Cont'd)

The "Basic Warranty" begins on your vehicle's Warranty Start Date.

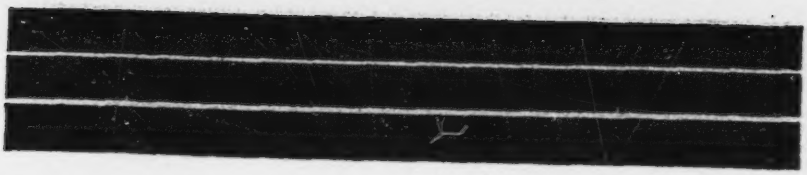
The Warranty Start Date is the earlier of (1) the date you take delivery of your new vehicle, OR (2) the date the vehicle was first put into service (for example, as a dealer "Demo" or as a Chrysler company vehicle). The "Basic Warranty" lasts for 36 months from this date OR for 36,000 miles on the odometer, whichever occurs first.

The "Basic Warranty" covers the cost of all parts and labor needed to repair any item on your vehicle (except as noted below) that's defective in material, workmanship, or factory preparation. You pay nothing for these repairs.

:EPTION: The following items are only covered for 12 hs or 12,000 miles on the odometer, whichever occurs first:

ht Bulbs
at Covers and Carpets
ıkes (Rotors, Pads,
ngs and Drums)
ses

- Wiper Blades
- Adjustments
- Drive Belts
- Clutch Discs



Exceptions:
The following items are not covered:

Tires (Covered by a separate tire warranty)
OKI Cellular Telephone (Covered by OKI Cellular Telephone Warranty)

Excluded Vehicles. There are two exceptions to the "3/36 Warranty" coverage. These are —

1. Vehicles bought by second buyers who DON'T choose to transfer the vehicle's "3/36 Warranty" in the manner required by this Warranty (see "Second & Subsequent Buyers" on page 9); and

2. Vehicles bought by third and subsequent buyers. (The "3/36 Warranty" may be transferred only ONCE, and ONLY to a second buyer, see "Second & Subsequent Buyers" on page 9.)

THIS 3/36 BASIC WARRANTY COVERAGE DOES NOT APPLY IF THE FIRST BUYER/OWNER HAS CHOSEN 12/12 AND 7/70 POWERTRAIN PROTECTION, AND THE 12/12 AND 7/70 POWERTRAIN BOX IS SELECTED ON THE BACK OF THIS BOOKLET.

ɔur 12/12 & 7/70 New Vehicle
ımited Warranty
12/12 Basic Warranty")

/ERAGE APPLICABLE ONLY IF THE FIRST BUYER/ NER HAS CHOSEN 12/12 AND 7/70 POWERTRAIN /ERAGE AND IF THE 12/12 AND 7/70 POWERTRAIN BOX ELECTED ON THE BACK OF THIS BOOKLET.

ıt's Covered:

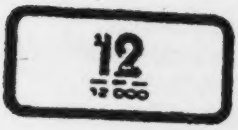
The "Basic Warranty" covers every Chrysler supplied part of your vehicle, EXCEPT its tires and OKI Cellular Telephone. The OKI Cellular Telephone and the tires are covered by separate warranties offered by their makers. See these warranty statements in your Owner's Literature Package.

The "Basic Warranty" covers your vehicle ONLY IF (1) it's registered in the U.S., (2) it's driven mainly in the U.S. or Canada, and (3) it's operated and maintained in the manner described in your "Owner's Manual".

E: Chrysler will not provide warranty coverage for vehicles rted from the U.S. or Canada to foreign sales areas by iduals or organizations other than Chrysler or its authorized butors unless these vehicles were previously registered and ally used in the U.S. or Canada prior to their export, except quired by law.

e vehicles registered to U.S. government officials or military ɔnnel on assignment are exempt from this policy. Vehicles tered and operated in U.S. possessions and territories are ɛct to U.S. warranties as applicable.

The "Basic Warranty" begins on your vehicle's Warranty Start Date.



The Warranty Start Date is the earlier of (1) the date you take delivery of your new vehicle, OR (2) the date the vehicle was first put into service (for example, as a dealer "Demo" or as a Chrysler company vehicle). The "Basic Warranty" lasts for 12 months from this date OR for 12,000 miles on the odometer, whichever occurs first.

The "Basic Warranty" covers factory installed air conditioning and heating systems for a period of 12 months, regardless of mileage. This same warranty applies to Chrysler air conditioning units installed by a Chrysler Corporation Dealer before your vehicle is delivered to you.

The "Basic Warranty" covers the cost of all parts and labor needed to repair any item on your vehicle that's defective in material, workmanship, or factory preparation, except tires and OKI Cellular Telephone. You pay nothing for these repairs or adjustments.

12/12 Basic Warranty") . . . (Cont'd)

E: You should tell your Dealer immediately if you find any :t in sheet metal, paint, trim or other appearance items when ake delivery of your new vehicle. Such defects will be red at no charge.

·ag Limited Warranty: If your vehicle is equipped with an ıg, the Air Bag Components listed below are covered for 36 hs or 36,000 miles on the odometer, whichever occurs first, ıo deductible, counted from the vehicle's warranty start

- Air Bag Module
- Clockspring Switch Assembly
- Front Impact Sensors
- Air Bag System Diagnostic Module

12/12 BASIC & 7/70 POWERTRAIN WARRANTY COV-GE DOES NOT APPLY IF THE FIRST BUYER/OWNER CHOSEN 3/36 BASIC LIMITED WARRANTY COVERAGE F THE 3/36 BOX IS SELECTED ON THE BACK OF THIS KLET.

Your 7/70 Powertrain Limited Warranty ("Powertrain Warranty")

APPLIES ONLY IF THE FIRST BUYER/OWNER HAS CHOSEN 12/12 AND 7/70 POWERTRAIN COVERAGE AND IF THE 12/12 AND 7/70 POWERTRAIN BOX IS SELECTED ON THE BACK OF THIS BOOKLET.

What's Covered:

The **"Powertrain Warranty"** covers these parts and components of your vehicle's powertrain for 7 years or 70,000 miles on the odometer, whichever occurs first, counted from the vehicle's Warranty Start Date.

Gasoline Engine: cylinder block and all internal parts, cylinder head assemblies, core plugs, valve covers, oil pan, timing gear drive belts and/or chains and cover, oil pump, intake and exhaust manifolds, water pump and housing, gaskets and seals for listed components, vibration damper.

Transmission/Transfer Case: case and all internal parts, oil pan, torque converter with starter ring gear, flex plate, bell housing, flywheel, gaskets and seals for these listed components.

t Wheel Drive: transaxle electronic controller, transaxle and all internal parts, oil pan and differential cover, flywheel rque converter and drive plate with starter ring gear, bell ing, flywheel, drive shaft assemblies, universal joints, ing and boots, gaskets and seals for these listed compo- s, PRNDL position switch, transaxle input speed sensor, axle output speed sensor, and transaxle solenoid assembly.

Vheel Drive: output ball bearings, external seals, internal s, output flange, end cover, viscous coupling, DOG clutch mbly, overrunning clutch, vacuum motor, torque tube, shaft bearings, pinion spacer and shim.

uded Vehicles. There are two exceptions to the vertrain Warranty" coverage. These are —

1. Vehicles bought by second buyers who DON'T choose to transfer the vehicle's "Powertrain Warranty" in the manner required by this Powertrain Warranty (see "Second & Subsequent Buyers" on page 9); and

2. Vehicles bought by third and subsequent buyers. (The "Powertrain Warranty" may be transferred only ONCE, and ONLY to a second buyer, see "Second & Subsequent Buyers" on page 9.)

The "Powertrain Warranty" covers your vehicle ONLY IF (1) it's registered in the U.S., (2) it's driven mainly in the U.S. or Canada, and (3) it's operated and maintained in the manner described in your "Owner's Manual".

The "Powertrain Warranty" begins at the end of the "Basic Warranty" period. The "Powertrain Warranty" takes effect as soon as (1) your vehicle has been in service for more than 12 months from its Warranty Start Date OR (2) you've put more than 12,000 miles on the odometer.

The "Powertrain Warranty" also covers the cost of towing your Dodge vehicle to the nearest Chrysler Corporation Dealer, if your vehicle can't be driven because of the failure of a covered powertrain part.

TALKING STRAIGHT

LEE IACOCCA

WITH SONNY KLEINFIELD

BANTAM BOOKS
TORONTO • NEW YORK • LONDON • SYDNEY • AUCKLAND

A-48

TALKING STRAIGHT
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month–and I must admit they do return with QUALITY stamped on their foreheads.

We can't ever let up, though, because our competitors are also pushing very hard. They aren't asleep at the wheel. Their drive for duality is as real as ours, and they've been pretty successful too. In 1980, when Detroit saw how far ahead Japanese cars were in quality, the Big Three kicked off crash efforts to cut the gap. Quality studies now bear out that a car made in America is right up there with a car made in Japan. Not quite as good, but almost. Yet because of past sins, the public's perception of our quality lags far behind the real thing. If our quality weren't up to snuff, Chrysler sure wouldn't be offering a seven-year, seventy-thousand-mile warranty, the best in the business. That's putting your money where your mouth is.

Big improvements are showing up in such basic appliances as refrigerators and stoves. Last year GE agreed to take back any major appliance for a full refund within ninety days if the customer didn't like what he or she got. Whirlpool went them one better and promised to replace any of its major appliances free of charge within a year if the customer wasn't completely happy.

In fact, everybody is pushing quality so hard that, if this keeps up, maybe one day the ideal we call "defect free" will become the norm. I can assure you that whichever company first sets that standard will really be in the driver's seat.

Even cities and municipalities are jumping into the quality act. In Miami, all of the city's five thousand cabdrivers are required to take a three-hour course in courtesy called "Miami Nice." The training seems to do the trick. Customer complaints have plummeted by 80 percent since the course started. (Whether the approach could ever work with New York cabbies is something else again.)

One of the nice things about quality is that when most red-blooded Americans see it, they like to brag about it–they're so grateful. I'll never forget the dentist in Detroit who drove his New Yorker over to our Jefferson Avenue plant and parked it by a group of line workers who were outside on a break. He walked up to them and said, "Did you people build this car?" They didn't know what to expect–maybe a tire iron across the skull or a can of Mace in the

* * *

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Tuesday, June 7, 1994

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Chrysler dumps 7/70 warranty, moves to 3/36

Keith Naughton

THE DETROIT NEWS

Chrysler Corp. unveiled a new warranty Monday on its 1995-model vehicles, putting a stop to the seven-year/70,000 mile power train guarantee that helped save the automaker in the 1980s.

Customers have become unhappy with the warranty that retired chairman Lee A. Iacocca touted in television ads as proof that Chrysler made quality vehicles, company officials said.

Chrysler officials said they expect to boost customer satisfaction with "Customer One Care," its new standard warranty, which offers bumper-to-bumper coverage for three years or 36,000 miles and roadside assistance at no additional charge. The 3/36 warranty has been standard in the industry for several years.

Chrysler has scored disappointingly low on J.D. Power and associates Inc.'s surveys of quality and customer service.

"This should drive higher customer satisfaction by eliminating confusion and complexity," said Joseph H. Casola, general service manager of Chrysler's customer services field operations.

In Chrysler service departments, dealers commonly go toe-to-toe with owners who find their 7/70 warranty too limited. What sounds like an extensive warranty actually covers only the engine and transmission after the first 12 months or 12,000 miles.

"The customer was dissatisfied," Casola said. "The perception of us as a warranty leader was basically based on advertising."

Since Chrysler began offering the optional choice of a 3/36 plan in the 1992 model year, more than half its buyers selected it over the 7/70 plan, Casola said. Now that 3/36 is the standard warranty, customers can pay $200 to $1,000 more to add 7/70 power train coverage under special service contracts.

On its own, the 7/70 plan had become "grossly uncompetitive," Casola said.

Iacocca had referred to that warranty as "the best in the business" in his many television commercials for Chrysler. Iacocca retired 18 months ago.

Iacocca's enthusiasm for 7/70 could account for Chrysler's reluctance to embrace 3/36 after Japanese automakers pioneered it in the 1980s, and General Motors Corp. and Ford Motor Co. quickly made it standard.

In his 1988 book Talking Straight, Iacocca bragged that "if our quality weren't up to snuff, Chrysler sure wouldn't be offering a 7/year, 70,000-mile warranty."

But Casola said Chrysler customers felt they were being "nickeled and dimed" by the many items not covered by Chrysler's old warranty. The automaker now will fix everything free, including small items such as fuses, light bulbs, carpets and seat covers.

Chrysler also is joining the rest of the industry in doing away with a $150 fee charged to buyers of used cars who want to assume the remainder of a vehicle's warranty.

All of these upgrades will cost Chrysler "hundreds of millions of dollars" in additional warranty costs, Casola said. He declined to be specific.

Chrysler shares fell $1.37 1/2 a share to $46.37 1/2 in composite trading on the New York Stock Exchange Monday.

---- INDEX REFERENCES ---

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STATE OF MINNESOTA
FOURTH JUDICIAL DISTRICT
COUNTY OF HENNEPIN
CASE TYPE: CONTRACT

Merlin Orvik and Rachel Orvik, individually and as representatives for all others similarly situated,

Plaintifs,

vs.

DAIMLERCHRYSLER Corporation, a Delaware Corporation, DAIMLERCHRYSLER MOTORS Corporation, a Delaware Corporation, Roseville Chrysler-Plymouth, Agency Inc., a Minnesota corporation, and Roseville Chrysler-Plymouth Sales, Inc., a Delaware corporation, individually and as representative for all other similarly situated Chrysler dealerships and Barnett Chrysler- Plymouth Co., a Minnesota corporation doing business as Barnett Chrysler-Plymouth-Jeep,

VERIFIED COMPLAINT **(CLASS ACTION)**

JURY TRIAL DEMANDED

Court File No._____

Inc. individually and as representative for all other similarly situated Chrysler dealerships, Defendants.	

Plaintiffs, individually and on behalf of all other persons similarly situated, for their Complaint against Defendants DaimlerChrysler Corporation, DaimlerChrysler Motors Corporation, Roseville Chrysler Plymouth and Barnett Chrysler Plymouth Jeep Eagle, allege as follows:

I. JURISDICTION AND VENUE

1. Plaintiffs Merlin and Rachel Orvik are citizens of the State of Minnesota.

2. Defendants DaimlerChrysler Corporation and DaimlerChrysler Motors Corporation (together referred to herein as "Chrysler") are Delaware corporations doing business in Minnesota with a registered agent located in Hennepin County.

3. Defendants Roseville Chrysler-Plymouth Agency, Inc. is a Minnesota corporation and Roseville Chrysler-Plymouth Sales, Inc. is a Delaware corporation (together referred to herein as "Roseville Chrysler Plymouth") both located at 2805 Highway 35 in Roseville, Minnesota. Plaintiff seeks relief against Roseville Chrysler Plymouth both individually and on behalf of all similarly situated Chrysler dealerships ("Dealers").

4. Defendant Barnett Chrysler-Plymouth Co. (individually referred to herein as "Barnett") is a Minnesota corporation doing business under the assumed name of Barnett Chrysler-Plymouth-Jeep, Inc. Barnett's principal place of business is located at 3610 Highway 61 in White

Bear Lake, Minnesota, 55110. Plaintiff seeks relief against Roseville Chrysler Plymouth individually and on behalf of all similarly situated Chrysler dealerships ("Dealers").

II. BACKGROUND/FACTUAL ALLEGATIONS

5. From approximately 1989 to 1994, Chrysler offered purchasers of new vehicles an "Owner's Choice Protection Plan" Warranty (AOCPP Warranty"). Under the OCPP Warranty, Defendants offered original purchasers the option of either: (1) a three-year, 36,000 mile basic (total car) warranty; or (2) a twelve-month, 12,000 mile basic (total car) warranty with a seven-year, 70,000 mile warranty on the powertrain.

6. Under the terms of the OCPP Warranty, Chrysler conditioned the transferability of the warranty to subsequent, used-car purchasers. Chrysler required used car purchasers who acquired the car during the duration of the original warranty to pay a $150 fee to an authorized Chrysler dealer within 30 days of acquiring the vehicle as a condition to extending the original warranty rights.

7. As provided in the 1994 Dodge Warranty booklet attached hereto as Exhibit A, the OCPP Warranty prohibited the transfer of the warranty to a subsequent purchaser of the vehicle unless the subsequent purchaser paid $150:

> **Subsequent Buyer/Owner**
> The Chrysler "Owner's Choice Protection Plan" Warranty is extended only to the first buyer/owner of the vehicle. If you're the second buyer/owner of the vehicle, you may transfer the warranty coverage under the "Owner's Choice Protection Plan" Warranty and the A7/100 Corrosion Warranty" into your name. To transfer the warranty, you must have an authorized Chrysler Corporation Dealer process a "Transfer of Coverage Application" for you. The cost for this service is $150. You pay this fee

directly to the dealer. You must apply for a coverage transfer within 30 days from the date you buy the vehicle. As a Second Buyer/Owner, you may transfer only the remaining "Owner's Choice Protection Plan" coverage which the first buyer/owner elected, together with the remaining portion of the A7/100 Corrosion Warranty."

8. In July of 1997, Plaintiffs purchased a 1994 Chrysler Concord from a used car dealer. In November of 1997 the transmission on the car went out. After bringing the car in for repair, Plaintiffs discovered that the car originally had a seven year, 70,000 mile warranty on the powertrain.

9. In November or December of 1997, Plaintiffs went to both Roseville Chrysler Plymouth and Barnett and requested that they honor the original warranty. Both Roseville Chrysler Plymouth and Barnett informed Plaintiffs that because they did not pay the $150 transfer fee within 30 days of acquiring the vehicle, Chrysler would not honor the warranty.

10. Plaintiffs had the vehicle repaired and paid approximately $1600 for the repairs. Plaintiffs subsequently brought suit against the used car dealer for failing to notify them of the conditional warranty fee. As the used car dealer contended that it was not aware of the fee at the time it sold the car to Plaintiffs, Plaintiffs settled their claim against the used car dealer for $500.

III. CLASS ACTION ALLEGATIONS

11. Plaintiffs seek to represent, pursuant to Rule 23 of the Minnesota Rules of Civil Procedure, a class that includes all persons who have not have paid any warranty transfer fee to Chrysler, and have been denied warranty coverage by Chrysler because of their failure to pay the transfer fee.

12. There are questions of law and fact common to the plaintiffs and the other members of the classes that predominate over any possible questions affecting individual members of the classes. Among the questions of law and fact common to the classes are the following:

(A) Whether Chrysler's denial of warranty rights for failure to pay the transfer fee violates the Magnuson Moss Warranty Act prohibiting conditional warranties;

(B) Whether Chrysler's denial of warranty rights for failure to pay the transfer fee violates the Uniform Commercial Code in nine states, including Minnesota, prohibiting sellers and manufacturers from limiting or excluding the operation of their express warranties;

(C) Whether Chrysler's denial of warranty rights for failure to pay the transfer fee violates the Magnuson Moss Act and state statutory and common law in 29 states, including Minnesota, abolishing privity as a defense to a breach of contract action based on an express warranty;

(D) Whether Chrysler's denial of warranty rights for failure to pay the transfer fee violates Minnesota's Consumer Fraud Act prohibiting manufacturers from dishonoring their express warranties;

13. This action is properly maintained as a class action for the following reasons:

(A) The members of the class are so numerous that joinder of all such class members is impracticable;

(B) There are questions of law or fact common to all members of the class;

(C) Plaintiffs' claims are typical of those of the members of the class;

(D) Plaintiffs will fairly and adequately protect the interests of the class;

Plaintiffs adequately represent the class;

(F) The questions of law or fact common to the class predominate over any possible questions affecting only individual class members;

(G) A class action is superior to any other possible available methods for the fair and efficient adjudication of the controversy; and

(H) Plaintiffs know of no difficulty that should be encountered in the management of this litigation that would preclude its maintenance as a class action.

COUNT I
VIOLATIONS OF MAGNUSON-MOSS WARRANTY ACT

14. Plaintiffs reallege and incorporate each and every preceding paragraph of this Complaint as if fully set forth herein.

15. Plaintiffs represent a nationwide group of individuals who have not paid the $150 transfer fee to Chrysler and have been denied warranty coverage because of their failure to pay the transfer fee.

16. The Magnuson Moss Warranty Act prohibits Chrysler and its Dealers from conditioning their warranties on the consumer's payment of a fee for a service:

> No warrantor of a consumer product may condition his written or implied warranty of such product on the consumer's using, in connection with such product, any article or service (other than article or service provided without charge under the terms of

the warranty) which is identified by brand, trade, or corporate name;

15 U.S.C. 2302(c) (1999).

17. Chrysler's OCPP warranty expressly conditions warranty coverage on a used car purchaser paying $150 "to an authorized Chrysler corporation dealer" "within 30 days" of acquiring the vehicle for the "service" of transferring the warranty.

18. The Magnuson Moss Act covers both purchasers of new and used goods as it defines a consumer as the original purchaser and any person who purchases a product "during the duration" of a written warranty.

19. By refusing to honor the OCPP Warranty because Plaintiffs did not pay the $150 transfer fee within 30 days of acquiring the vehicle, Chrysler and its Dealers have violated the conditional warranty provisions of the Magnuson Moss Warranty Act. 15 U.S.C.§2302(c); 15 U.S.C.§2304(b)(1).

20. Plaintiffs seek recovery of the damages they have suffered for Defendants' refusal to honor the vehicle's original warranty and violations of the Magnuson Moss Act and all damages suffered by others similarly situated, a sum in excess of Fifty Thousand Dollars ($50,000), together with reasonable attorneys fees, costs and disbursements.

COUNT II
BREACH OF CONTRACT AND VIOLATION OF SECTION 2-318

21. Plaintiff Janine Haas realleges and incorporates each and every preceding paragraph of this Complaint as if fully set forth herein.

22. Nine states, including Minnesota, as a matter of law extend the original purchaser's warranty rights to all subsequent, third party purchasers and further prohibit

warrantors from taking any action in an attempt to "limit or exclude" the statutory warranty rights extended to third party purchasers.

23. Minnesota Statutes, section 336.2-318 provides:

> A seller's warranty whether express or implied extends to any person who may reasonably be expected to use, consume or be affected by the goods and who is injured by breach of the warranty. A seller may not exclude or limit the operation of this section.

Minn. Stat. 336.2-318 (1999) [emphasis supplied].

24. The eight other states expressly extending the original purchaser's warranty rights to all subsequent, third party purchasers and further prohibiting warrantors from taking any action in an attempt to "limit or exclude" the statutory warranty rights of third party purchasers are Colorado, Colo. Rev. Stat.§4-2-318 (1999); Delaware, Del. Code Ann. tit. 6,§2-318 (1999); Massachusetts, Mass. Gen. L. ch. 106,§2-318 (1999); New Hampshire, N.H. Rev. Stat. Ann.§382-A:2-318 (1999); Rhode Island, R.I. Gen. Laws§6A-2-318 (1999); South Carolina, S.C. Code Ann.§36-2-318 (1999); South Dakota, S.D. Codified Laws Ann.§57A-2-318 (1999); and Wyoming, Wyo. Stat.§34.1-2-318 (1999).

25. By requiring used car purchasers to pay $150 as a condition to acquiring the original purchaser's warranty rights, Chrysler and its Dealers have violated section 2-318 by limiting and excluding its operation.

26. Plaintiffs seek recovery of the damages they have suffered for Defendants' refusal to honor the vehicle's original warranty, all damages suffered by all others similarly situated, a sum in excess of Fifty Thousand Dollars ($50,000), together with reasonable attorneys fees, costs and disbursements.

COUNT III
MAGNUSON MOSS AND
STATE LAW BREACH OF WARRANTY

27. Plaintiff Janine Haas realleges and incorporates each and every preceding paragraph of this Complaint as if fully set forth herein.

28. The Magnuson Moss Act expressly provides that warrantors may not limit the rights and remedies available to consumers under state law. The Magnuson Moss Act further creates a federal cause of action for breach of warranty claims.

29. 29 states, including Minnesota, have abolished privity as a defense by statute or common law where consumers seek recovery for economic damages for breach of contract based on an express warranty.

30. The thirteen states statutorily abolishing privity as a defense to a breach of contract claim based on express warranty for economic damages are: Colorado, Colo. Rev. Stat.§4-2-318 (1999); Delaware, Del. Code Ann. tit. 6,§2-318 (1999); Georgia, Ga. Code Ann.§51-1-11 (1999); Maine, Me. Rev. Stat. Ann. tit. 11§2-318 (1999); Massachusetts, Mass. Gen. L. ch. 106,§2-318 (1999); Minnesota, Minn. Stat. 336.2-318 (1999); New Hampshire, N.H. Rev. Stat. Ann.§382-A:2-318 (1999); Rhode Island, R.I. Gen. Laws§6A-2-318 (1999); South Carolina, S.C. Code Ann.§36-2-318 (1999); South Dakota, S.D. Codified Laws Ann.§57A-2-318 (1999); Tennessee, Tenn. Code Ann.§29-34-104 (1999); Virginia, Va. Code Ann.§8-2-318 (1999) and Wyoming, Wyo. Stat.§34.1-2-318 (1999).

31. Sixteen other states have abolished privity as a defense to a breach of contract claim based on express warranty alleging economic damages by common law development: Alaska, Arkansas, Hawaii, Louisiana,

Nebraska, Nevada, New Jersey, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Utah, Vermont, and West Virginia.

32. By denying warranty coverage to individuals who failed to pay the $150 warranty transfer fee, Chrysler and its Dealers have violated state laws abolishing privity as a defense to a breach of contract action and the Magnuson-Moss Warranty Act.

33. Plaintiffs seek recovery of the damages they have suffered for Defendants' refusal to honor the vehicle's original warranty and violations of the Magnuson Moss Act and all damages suffered by others similarly situated, a sum in excess of Fifty Thousand Dollars ($50,000), together with reasonable attorneys fees, costs and disbursements.

COUNT IV
CONSUMER FRAUD

34. Plaintiffs reallege and incorporate each and every preceding paragraph of this Complaint as if fully set forth herein.

35. Minnesota's Consumer Fraud Act requires manufacturers and sellers to honor the terms of their express warranties:

> The maker of an express warranty arising out of a consumer sale shall honor the terms of the express warranty.... In a consumer sale, the manufacturer shall honor an express warranty made by the manufacturer.

Minn. Stat.§325F.19, subd. 2 (1999).

36. Relief under the Minnesota Consumer Fraud Act includes: A...damages ... costs and disbursements, including costs of investigation and reasonable attorney's fees...." Minn. Stat.§8.31, subd. 3 (1999).

37. By denying warranty coverage to individuals who have not paid the $150 Conditional Warranty fee, Chrysler and its Dealers have violated the Consumer Fraud Act.

38. Plaintiffs seek recovery of the damages they have suffered as a direct and proximate result of Defendants' violations of the Consumer Fraud Act and all damages suffered by others similarly situated, a sum in excess of Fifty Thousand Dollars ($50,000), together with reasonable attorneys fees, costs and disbursements.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the other members of the class, pray for judgment against Defendants as follows:

1. Declaring this action to be a proper class action, appointing Plaintiffs as class representatives and counsel as class counsel;

2. Awarding Plaintiffs and the other members of the class compensatory and consequential damages in an amount to be awarded at trial;

3. Awarding Plaintiff and other members of the class prejudgment interest at the maximum rate permitted by law;

4. Awarding Plaintiffs and the other members of the class costs and expenses of this litigation, including reasonable attorneys' fees and costs, including experts' fees and costs;

5. An injunction prohibiting Defendants from in the future demanding any fee as a condition to the transfer of warranty rights; and

6. Granting such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of all issues so triable.

VERIFICATION

Plaintiffs hereby verify and attest that the foregoing factual allegations are true to the best of their knowledge and belief.

_____

Merlin Orvik

_____

Rachel Orvik

Dated: November 20, 2000

_____

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ACKNOWLEDGMENT

The undersigned hereby acknowledges that the Court, pursuant to Minnesota Statutes, section 549.21, subdivision 2, may award costs, disbursements and reasonable attorney and witness fees to the opposing parties in this litigation if the Court should find that the undersigned acted in bad faith; asserted a claim or defense that is frivolous and that is costly to the other party; asserted an unfounded position solely to delay the ordinary course of proceedings or to harass; or committed a fraud upon the Court.

_____
William B. Butler (227912)